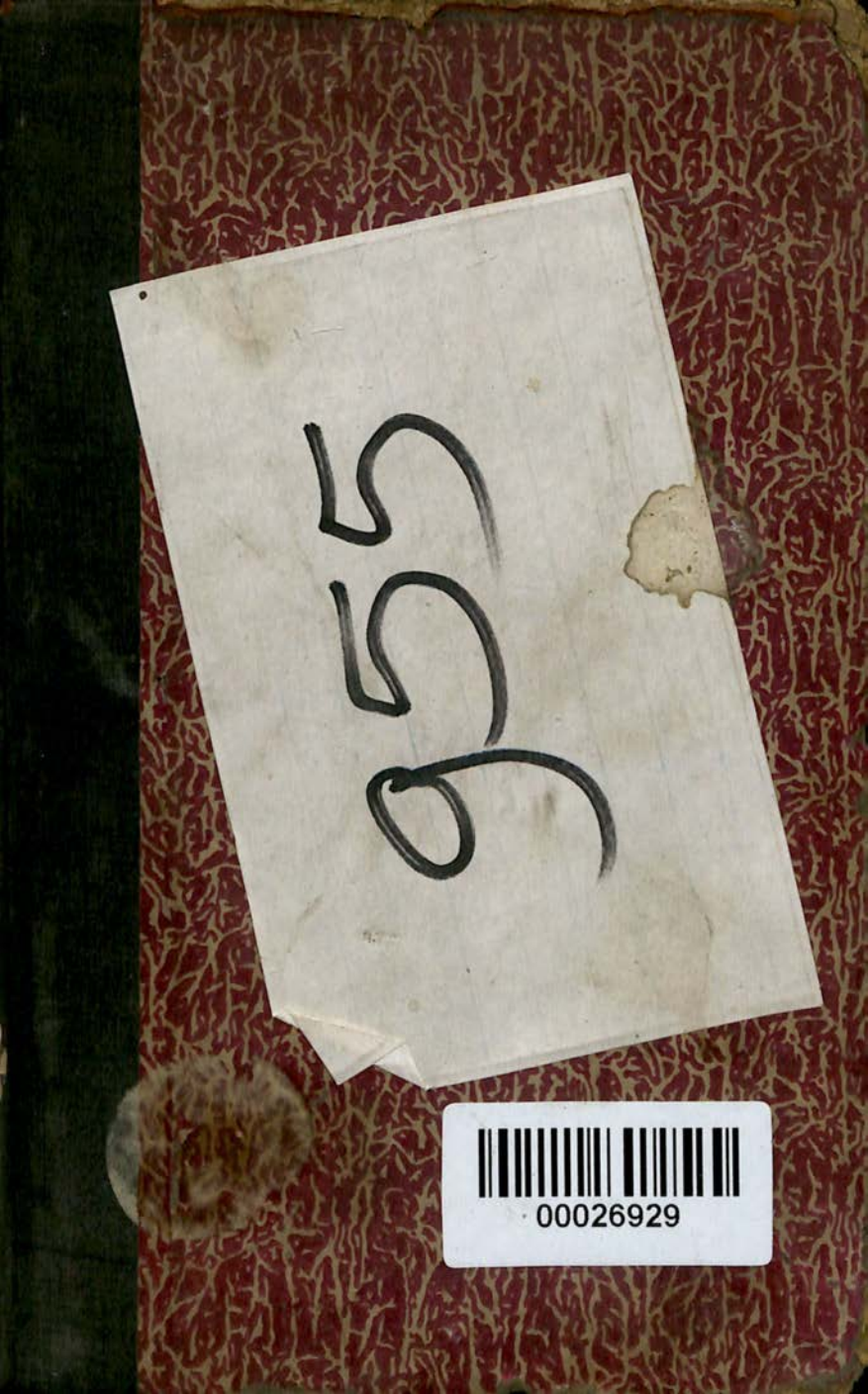
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A FRAGMENT ON GOVERNMENT.

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PREFACE.

THE age we live in is a buſy age; in which knowledge is rapidly advancing towards perfection. In the natural world, in particular, every thing teems with diſcovery and with improvement. The moſt diſtant and recondite regions of the earth traverſed and explored—the all-vivifying and ſubtle element of the air ſo recently analyzed and made known to us,—are ſtriking evidences, were all others wanting, of this pleaſing truth.

Motives of the preſent undertaking.

Correſpondent to *diſcovery* and *improvement* in the natural world, is *reformation* in the moral: if that which ſeems a common notion be, indeed, a true one, that in the moral world there no longer remains any matter for *diſcovery*. Perhaps, however, this may not be the caſe: perhaps among ſuch obſervations as would be beſt calculated to ſerve as grounds for reformation, are ſome which, being obſervations of matters of fact hitherto either incompletely noticed, or not at all, would, when produced, appear capable of bearing the name of diſcoveries: with ſo little method and preciſion have the conſequences

Motives of the preſent undertaking.

of this fundamental axiom, *it is the greateſt happineſs of the greateſt number that is the meaſure of right and wrong*, been as yet developped.

Be this as it may, if there be room for making, and if there be uſe in publiſhing, *diſcoveries* in the *natural* world, ſurely there is not much leſs room for making, nor much leſs uſe in propoſing, *reformation* in the *moral*. If it be a matter of importance and of uſe to us to be made acquainted with *diſtant* countries, ſurely it is not a matter of much leſs importance, nor of much leſs uſe to us, to be made better and better acquainted with the chief means of living happily in our *own*: If it be of importance and of uſe to us to know the principles of the element we breathe, ſurely it is not of much leſs importance nor of much leſs uſe to comprehend the principles, and endeavour at the improvement of thoſe *laws*, by which alone we breathe it in ſecurity. If to this endeavour we ſhould fancy any Author, eſpecially any Author of great name, to *be*, and as far as could in ſuch caſe be expected, to *avow himſelf* a determined and perſevering enemy, what ſhould we ſay of him? We ſhould ſay that the intereſts of reformation, and through them the welfare of mankind, were inſeparably connected with the downfall of his works: of a great part, at leaſt, of the eſteem

and

and influence, which theſe works might under whatever title have acquired.

Motives of the preſent undertaking.

Such an enemy it has been my misfortune (and not mine only) to ſee, or fancy at leaſt I ſaw, in the Author of the celebrated COMMENTARIES *on the* LAWS *of* ENGLAND: an Author whoſe works have had beyond compariſon a more extenſive circulation, have obtained a greater ſhare of eſteem, of applauſe, and conſequently of influence (and that by a title on many grounds ſo indiſputable) than any other writer who on that ſubject has ever yet appeared.

It is on this account that I conceived, ſome time ſince, the deſign of pointing out ſome of what appeared to me the capital blemiſhes of that work, particularly this grand and fundamental one, the antipathy to reformation; or rather, indeed, of laying open and expoſing the univerſal inaccuracy and confuſion which ſeemed to my apprehenſion to pervade the whole. For, indeed, ſuch an ungenerous antipathy ſeemed of itſelf enough to promiſe a general vein of obſcure and crooked reaſoning, from whence no clear and ſterling knowledge could be derived; ſo intimate is the connexion between ſome of the gifts of the underſtanding, and ſome of the affections of the heart.

Hiſtory of it.

Hiſtory of it.

It is in this view then that I took in hand that part of the firſt volume to which the Author has given the name of INTRODUCTION. It is in this part of the work that is contained whatever comes under the denomination of *general principles*. It is in this part of the work that are contained ſuch preliminary views as it ſeemed proper to him to give of certain objects real or imaginary, which he found connected with his ſubject LAW by identity of name: two or three ſorts of LAWS of *Nature*, the *revealed* LAW, and a certain LAW of *Nations*. It is in this part of the work that he has touched upon ſeveral topics which relate to all laws or inſtitutions [*a*] in general, or at leaſt to whole claſſes of inſtitutions without relating to any one more than to another.

To ſpeak more particularly, it is in this part of his work that he has given a definition, ſuch as it is, of that whole branch of law which he had taken for his ſubject; that branch, which ſome, conſidering it as a main ſtock, would term LAW without addition; and which he, to diſtinguiſh it from thoſe

[*a*] I add here the word *inſtitutions*, for the ſake of including rules of *Common* Law, as well as portions of *Statute* Law.

others

others its *condividents branches* [*b*], terms law *municipal*:—an account, such as it is, of the nature and origin of *Natural* Society the mother, and of *Political* Society the daughter, of Law *municipal*, duly begotten in the bed of Metaphor:—a division, such as it is, of *a* law, individually considered, into what he fancies to be its *parts*:—an account, such as it is, of the method to be taken for *interpreting* any law that may occur. History of it.

In regard to the Law of England in particular, it is here that he gives an account of the division of it into its two branches (branches, however, that are no ways distinct in the purport of them, when once established, but only in respect of the source from whence their establishment took its rise) the *Statute* or *Written* law, as it is called, and the *Common* or *Unwritten*:—an account of what are called *General Customs*, or institutions in force throughout the whole empire, or at least the whole nation;—of what are called *Particular Customs*, institutions of local extent established in particular districts; and of such *adopted* institutions of a general extent, as are parcel of what are called the *Civil* and the *Canon* laws; all three in the character of so many branches

[*b*] *Membra condividentia.*—Saund. Log. L. I. c. 46.

History of it.

of what is called the *Common Law*: in fine, a general account of *Equity*, that capricious and incomprehenſible miſtreſs of our fortunes, whoſe features neither our Author, nor perhaps any one is well able to delineate;—of *Equity*, who having in the beginning been a rib of *Law*, but ſince in ſome dark age plucked from her ſide, when ſleeping, by the hands not ſo much of God as of enterprizing Judges, now lords it over her parent ſiſter:——

All this, I ſay, together with an account of the different diſtricts of the empire over which different portions of the Law prevail, or over which the Law has different degrees of force, compoſes that part of our Author's work which he has ſtyled the INTRODUCTION. His eloquent "Diſcourſe on the ſtudy "of the Law," with which, as being a diſcourſe of the rhetorical kind rather than of the didactic, I propoſed not to intermeddle, prefaces the whole.

It would have been in vain to have thought of travelling over the whole of ſo vaſt a work. My deſign, therefore, was to take ſuch a portion of it, as might afford a fair and adequate ſpecimen of the character and complexion of the whole. For this purpoſe the part here marked out would, I thought, abundantly ſuffice. This, however narrow in extent, was the moſt conſpicuous, the moſt characteriſtic

iſtic part of our Author's work, and that which was moſt his own. The reſt was little more than compilation. Purſuing my examination thus far, I ſhould purſue it, I thought, as far as was neceſſary for my purpoſe: and I had little ſtomach to purſue a talk at once ſo laborious and ſo invidious any farther. If *Hercules*, according to the old proverb, is to be known *ex pede*; much more, thought I, is he to be known *ex capite*.

Hiſtory of it.

In theſe views it was that I proceeded as far as the middle of the definition of Law *municipal*. It was there I found, not without ſurprize, the digreſſion which makes the ſubject of the preſent eſſay. This threw me at firſt into no ſmall perplexity. To give no account of it at all;—to paſs wholly *ſub ſilentio*, ſo large, and in itſelf ſo material a part of the work I was examining, would ſeem ſtrange: at the ſame time I ſaw no poſſibility of entering into an examination of a paſſage ſo anomalous, without cutting in pieces the thread of the diſcourſe. Under this doubt I determined at any rate, for the preſent, to paſs it by; the rather as I could not perceive any connexion that it had with any thing that came before or after. I did ſo; and continuing my examination of the definition from which it digreſſed, I travelled on to the end of the Introduction. It then became ne-

History of it.

ceſſary to come to ſome definitive reſolution concerning this excentric part of it: and the reſult was, that being loth to leave the enterprize I had begun in this reſpect imperfect, I ſat down to give what I intended ſhould be a very ſlight and general ſurvey of it. The farther, however, I proceeded in examining it, the more confuſed and unſatisfactory it appeared to me: and the greater difficulty I found in knowing what to make of it, the more words it coſt me, I found, to ſay ſo. In this way, and by theſe means it was that the preſent Eſſay grew to the bulk in which the Reader ſees it. When it was nearly completed, it occurred to me, that as the digreſſion itſelf which I was examining was perfectly diſtinct from, and unconnected with the text from which it ſtarts, ſo was, or ſo at leaſt might be, the *critique* on that digreſſion, from the *critique* on the text. The former was by much too large to be engrafted into the latter: and ſince if it accompanied it at all, it could only be in the ſhape of an Appendix, there ſeemed no reaſon why the ſame publication ſhould include them both. To the former, therefore, as being the leaſt, I determined to give that finiſh which I was able, and which I thought was neceſſary: and to publiſh it in this detached manner, as the firſt, if not the only part of a work

work, the principal and remaining part of which may possibly see the light some time or other, under some such title as that of "*A* COMMENT *on the* "COMMENTARIES." History of it.

In the mean time that I may stand more fully justified, or excused at least, in an enterprize to most perhaps so extraordinary, and to many doubtless so unacceptable, it may be of use to endeavour to state with some degree of precision, the grounds of that war which, for the interests of true science, and of liberal improvement, I think myself bound to wage against this work. I shall therefore proceed to mark out and distinguish those points of view in which it seems principally reprehensible, not forgetting those in which it seems still entitled to our approbation and applause.

The business of the *Censor* distinguished from that of the *Expositor*.

There are two characters, one or other of which every man who finds any thing to say on the subject of Law, may be said to take upon him;—that of the *Expositor*, and that of the *Censor*. To the province of the *Expositor* it belongs to explain to us what, as he supposes, the Law *is:* to that of the *Censor*, to observe to us what he thinks it *ought to be*. The former, therefore, is principally occupied in stating, or in enquiring after *facts*: [c] the latter, in

[c] In practice, the question of *Law* has commonly been spoken of as opposed to that of *fact:* but this distinction

The buſineſs of the *Cenſor* diſtinguiſhed from that of the *Expoſitor*.

in diſcuſſing *reaſons*. The *Expoſitor*, keeping within his ſphere, has no concern with any other faculties of the mind than the *apprehenſion*, the *memory*, and the *judgment*: the latter, in virtue of thoſe ſentiments of pleaſure or diſpleaſure which he finds occaſion to annex to the objects under his review, holds ſome intercourſe with the *affections*. That which *is* Law, is, in different countries, widely different: while that which *ought to be*, is in all countries to a great degree the ſame. The *Expoſitor*, therefore, is always the citizen of this or that particular country: the *Cenſor* is, or ought to be the citizen of the world. To the *Expoſitor* it belongs to ſhew what the *Legiſlator* and his underworkman the *Judge* have done *already*: to the *Cenſor* it belongs to ſuggeſt what the *Legiſlator ought* to do *in future*. To the Cenſor, in ſhort, it belongs to *teach* that *ſcience*, which when by change of hands converted into an *art*, the LEGISLATOR *practiſes*.

The latter alone our Author's.

Let us now return to our Author. Of theſe two perfectly diſtinguiſhable functions, the latter alone

diſtinction is an accidental one. That a Law commanding or prohibiting ſuch a *ſort* of action, has been eſtabliſhed, is as much a *fact*, as that an *individual* action of that ſort has been committed. The eſtabliſhment of a Law may be ſpoken of as a *fact*, at leaſt for the purpoſe of diſtinguiſhing it from any conſideration that may be offered as a *reaſon* for ſuch Law.

is that which it fell neceſſarily within his province to diſcharge. His profeſſed object was to explain to us what the Laws of England *were*. "*Ita lex* "*ſcripta eſt*," was the only motto which he ſtood engaged to keep in view. The work of *cenſure* (for to this word, in default of any other, I find it neceſſary to give a *neutral* ſenſe) the work of *cenſure*, as it may be ſtyled, or, in a certain ſenſe, of *criticiſm*, was to him but a *parergon*—a work of ſupererogation: a work, indeed, which, if aptly executed, could not but be of great ornament to the principal one, and of great inſtruction as well as entertainment to the Reader, but from which our Author, as well as thoſe that had gone before him on the ſame line, might, without being chargeable with any deficiency, have ſtood excuſed: a work which, when ſuperadded to the principal, would lay the Author under additional obligations, and impoſe on him new duties: which, notwithſtanding whatever elſe it might differ in from the principal one, agrees with it in this, that it ought to be executed with impartiality, or not at all.

The latter alone our Author's.

Laws ought to be ſcrutinized with freedom.

If, on the one hand, a haſty and undiſcriminating condemner of what is eſtabliſhed, may expoſe himſelf to contempt; on the other hand, a bigotted or corrupt defender of the works of power, becomes guilty, in a manner, of the abuſes which he ſupports:

Laws ought to be ſcrutinized with freedom.

ſupports: the more ſo if, by oblique glances and ſophiſtical gloſſes, he ſtudies to guard from reproach, or recommend to favour, what he knows not how, and dares not attempt, to juſtify. To a man who contents himſelf with ſimply ſtating an inſtitution as he thinks it *is*, no ſhare, it is plain, can juſtly be attributed (nor would any one think of attributing to him any ſhare) of whatever reproach, any more than of whatever applauſe the inſtitution may be thought to merit. But if not content with this humbler function, he takes upon him to give *reaſons* in behalf of it, reaſons whether *made* or found by him, it is far otherwiſe. Every falſe and ſophiſtical reaſon that he contributes to circulate, he himſelf is chargeable with: nor ought he to be holden guiltleſs even of ſuch as, in a work where *fact* not *reaſon* is the queſtion, he delivers as from other writers without cenſure. By officiouſly adopting them he makes them his own, though delivered under the names of the reſpective Authors: not much leſs than if delivered under his own. For the very idea of a *reaſon* betokens approbation: ſo that to deliver a remark under that character, and that without cenſure, is to adopt it. A man will ſcarcely, therefore, without ſome note of diſapprobation, be the inſtrument of introducing, in the guiſe of a reaſon,

an argument which he does not really wiſh to ſee approved. Some method or other he will take to waſh his hands of it: ſome method or other he will take to let men ſee that what he means to be underſtood to do, is merely to report the judgment of another, not to paſs one of his own. Upon that other then he will lay the blame: at leaſt he will take care to repel it from himſelf. If he omits to do this, the moſt favourable cauſe that can be aſſigned to the omiſſion is indifference: indifference to the public welfare—that indifference which is itſelf a crime.

Laws ought to be ſcrutinized with freedom.

It is wonderful how forward ſome have been to look upon it as a kind of preſumption and ingratitude, and rebellion, and cruelty, and I know not what beſides, not to alledge only, nor to own, but to ſuffer any one ſo much as to imagine, that an old-eſtabliſhed law could in any reſpect be a fit object of condemnation. Whether it has been a kind of *perſonification* that has been the cauſe of this, as if the Law were a living creature, or whether it has been the mechanical veneration for antiquity, or what other deluſion of the fancy, I ſhall not here enquire. For my part, I know not for what good reaſon it is that the merit of juſtifying a law when right ſhould have been thought greater, than that of cenſuring it when wrong. Under a government of

Laws,

Laws ought to be ſcrutinized with freedom.

Laws, what is the motto of a good citizen? *To obey punctually; to cenſure freely.*

Thus much is certain; that a ſyſtem that is never to be cenſured, will never be improved: that if nothing is ever to be found fault with, nothing will ever be mended: and that a reſolution to approve every thing at any rate, and to diſapprove of nothing, is a reſolution which, purſued in future, muſt ſtand as an effectual bar to all the *additional* happineſs we can ever hope for; purſued hitherto would have robbed us of that ſhare of happineſs which we enjoy already.

Nor is a diſpoſition to find "every thing as it "ſhould be," leſs at variance with itſelf, than with reaſon and utility. The common-place arguments in which it vents itſelf juſtify not what is eſtabliſhed, in effect any more than they condemn it: ſince whatever *now* is eſtabliſhment, *once* was innovation.

Precipitate cenſure, caſt on a political inſtitution, does but recoil on the head of him who caſts it. From ſuch an attack it is not the inſtitution itſelf, if well grounded, that can ſuffer. What a man ſays againſt it either makes impreſſion or makes none. If none, it is juſt as if nothing had been ſaid about the matter: if it *does* make an impreſſion, it naturally calls up ſome one or other in de-

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fence. Nor if the inſtitution is in truth a beneficial one to the community in general, it cannot but have given an intereſt in its preſervation to a number of individuals. By their induſtry, then, the reaſons on which it is grounded are brought to light: from the obſervation of which thoſe who acquieſced in it before upon truſt, now embrace it upon conviction. Cenſure, therefore, though ill-founded, has no other effect upon an inſtitution than to bring it to that teſt, by which the value of thoſe, indeed, on which prejudice alone has ſtamped a currency, is cried down, but by which the credit of thoſe of ſterling utility is confirmed.

Laws ought to be ſcrutinized with freedom.

Nor is it by any means from paſſion and ill-humour, that cenſure, paſſed upon legal inſtitutions, is apt to take its birth. When it is from paſſion and ill-humour that men ſpeak, it is with *men* that they are in ill-humour, not with laws: it is men, not laws, that are the but of "arrogance."[d] Spleen and

[d] "*Arrogance*;" our Author calls it "*the utmoſt arrogance**, to cenſure what has, at leaſt, a better chance to be right, than the ſingular notions of any particular man:" meaning thereby certain eccleſiaſtical inſtitutions. Vibrating, as it ſhould ſeem, between paſſion and diſcretion, he has thought it neceſſary, indeed, to inſert in the ſentence that, which being

* 4 Comm. p. 50.

inſerted,

Laws ought to be ſcrutinized with freedom.

and turbulence may indeed prompt men to quarrel with living individuals: but when they make complaint of the dead letter of the Law, the work of departed lawgivers, againſt whom no perſonal antipathy

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inſerted, turns it into nothing: After the word "cenſure," "with contempt" he adds, "and rudeneſs:" as if there needed a profeſſor to inform us, that to treat any thing with contempt and rudeneſs is arrogance. "Indecency," he had already called it, "to ſet up "private judgment in oppoſition to public:" and this without reſtriction, qualification, or reſerve. This was in the firſt tranſport of a holy zeal, before diſcretion had come in to his aſſiſtance. This paſſage the Doctors *Prieſtly** and *Furneaux*†, who, in quality of Diſſenting Miniſters, and champions of diſſenting opinions, ſaw themſelves particularly attacked in it, have not ſuffered to paſs unnoticed: any more than has the celebrated Author of the "*Remarks on* "*the Acts of the 13th Parliament*‡," who found it adverſe to his enterprize, for the ſame reaſon that it is hoſtile to every other liberal plan of political diſcuſſion.

☞ My edition of the Commentaries happens to be the firſt: ſince the above paragraph was written I have been directed to a later. In this later edition the paſſage about "indecency" is, like the other about "arrogance," explained away into nothing. What we are now told is, that "to ſet up private judgment in

* See Remarks, &c.

† See Letters to Mr. Juſtice Blackſtone, 1771. Second Edition.

‡ In the Preface.

"[*virulent*

pathy can have ſubſiſted, it is always from the obſervation, or from the belief at leaſt, of ſome real grievance. The Law is no man's enemy: the Law is no man's rival. Aſk the clamorous and unruly multitude—it is never the Law itſelf that is in the wrong: it is always ſome wicked interpreter of the Law that has corrupted and abuſed it [*e*].

Laws ought to be ſcrutinized with freedom.

Thus

"[*virulent and factious*] oppoſition to public *authority*" (he might have added—or to *private* either) is "indecency." [See the 5th Edit. 8vo. p. 50, as in the 1ſt.] This we owe, I think, to Dr. Furneaux. The Doctors Furneaux and Prieſtly, under whoſe well-applied correction our Author has ſmarted ſo ſeverely, have a good deal to anſwer for: They have been the means of his adding a good deal of this kind of rhetorical lumber to the plentiful ſtock there was of it before. One paſſage, indeed, a paſſage deep-tinctured with religious gall, they have been the means of clearing away entirely *: and in this, at leaſt, they have done good ſervice. They have made him ſophiſticate: they have made him even expunge: but all the Doctors in the world, I doubt, would not bring him to confeſſion. See his Anſwer to Dr. Prieſtly.

[*e*] There is only one way in which cenſure, caſt upon the Laws, has a greater tendency to do harm than good; and that is when it ſets itſelf to conteſt their validity: I mean, when abandoning the queſtion of expediency, it ſets itſelf to conteſt the right. But

* See Furneaux, Letter VII.

Laws ought to be ſcrutinized with freedom.

Thus deſtitute of foundation are the terrors, or pretended terrors, of thoſe who ſhudder at the idea of a free cenſure of eſtabliſhed inſtitutions. So little does the peace of ſociety require the aid of thoſe leſſons which teach men to accept of any thing as a reaſon, and to yield the ſame abject and indiſcriminating homage to the Laws here, which is paid to the deſpot elſewhere. The fruits of ſuch tuition are viſible enough in the character of that race of men who have always occupied too large a ſpace in the circle of the profeſſion: A paſſive and enervate race, ready to ſwallow any thing, and to acquieſce in any thing: with intellects incapable of diſtinguiſhing right from wrong, and with affections alike indifferent to either: inſenſible, ſhort-ſighted, obſtinate: lethargic, yet

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this is an attack to which old-eſtabliſhed Laws are not ſo liable. As this is the laſt though but too common reſource of paſſion and ill-humour; and what men ſcarce think of betaking themſelves to, unleſs irritated by perſonal competitions, it is that to which recent Laws are moſt expoſed. I ſpeak of what are called *written* Laws: for as to *unwritten* inſtitutions, as there is no ſuch thing as any certain ſymbol by which their authority is atteſted, *their* validity, how deeply rooted ſoever, is what we ſee challenged without remorſe. A radical weakneſs, interwoven into the very conſtitution of all *un*written Law.

liable

liable to be driven into convulsions by false terrors: deaf to the voice of reason and public utility: obsequious only to the whisper of interest, and to the beck of power.

Laws ought to be scrutinized with freedom.

This head of mischief, perhaps, is no more than what may seem included under the former. For why is it an evil to a country that the minds of those who have the Law under their management should be thus enfeebled? It is because it finds them impotent to every enterprize of improvement.

Not that a race of lawyers and politicians of this enervate breed is much less dangerous to the duration of that share of felicity which the State possesses at any given period, than it is mortal to its chance of attaining to a greater. If the designs of a Minister are inimical to his country, what is the man of all others for him to make an instrument of or a dupe? Of all men, surely none so fit as that sort of man who is ever on his knees before the footstool of Authority, and who, when those *above* him, or *before* him, have pronounced, thinks it a crime to have an opinion of his own.

Those who duly consider upon what slight and trivial circumstances, even in the happiest times, the adoption or rejection of a Law so often turns;

Laws ought to be ſcrutinized with freedom.

circumſtances with which the utility of it has no imaginable connection—thoſe who conſider the deſolate and abject ſtate of the human intellect, during the periods in which ſo great a part of the ſtill ſubſiſting maſs of inſtitutions had their birth—thoſe who conſider the backwardneſs there is in moſt men, unleſs when ſpurred by perſonal intereſts or reſentments, to run a-tilt againſt the Coloſſus of authority—thoſe, I ſay, who give theſe conſiderations their due weight, will not be quite ſo zealous, perhaps, as our Author has been to terrify men from ſetting up what is now "private judgment," againſt what once was "public:" [*f*] nor to thunder down the harſh epithet of "arrogance" on thoſe, who, with whatever ſucceſs, are occupied in bringing rude eſtabliſhments to the teſt of poliſhed reaſon. They will rather do what they can to cheriſh a diſpoſition at once ſo uſeful and ſo rare: [*g*] which

[*f*] See note [*d*].

[*g*] One may well ſay *rare*. It is a matter of fact about which there can be no diſpute. The truth of it may be ſeen in the multitude of *Expoſitors* which the Juriſprudence of every nation furniſhed, ere it afforded a ſingle *Cenſor*. When Beccaria came, he was received by the intelligent as an Angel from heaven would be by the faithful. He may be ſtyled the father of *Cenſorial Juriſprudence*. Monteſquieu's was a work

which is ſo little connected with the cauſes that make popular diſcontentments dangerous, and which finds ſo little aliment in thoſe propenſities that govern the multitude of men. They will not be for giving ſuch a turn to their diſcourſes as to beſpeak the whole of a man's favour for the defenders of what is eſtabliſhed: nor all his reſentment for the aſſailants. They will acknowledge that if there be ſome inſtitutions which it is "arrogance" to attack, there may be others which it is effrontery to defend. TOURREIL [*b*] has defended torture: torture eſtabliſhed by the "public judgment" of ſo many enlightened nations. BECCARIA ("indecent" and "arrogant" Beccaria!) has condemned it. Of theſe two whoſe lot among men would one chooſe rather,—the Apologiſt's or the Cenſor's?

Laws ought to be ſcrutinized with freedom.

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work of the mixed kind. Before Monteſquieu all was unmixed barbariſm. Grotius and Puffendorf were to Cenſorial Juriſprudence what the Schoolmen were to Natural Philoſophy.

[*b*] A French Juriſt of the laſt age, whoſe works had like celebrity, and in many reſpects much the ſame ſort of merits as our Author's. He was known to moſt advantage by a tranſlation of Demoſthenes. He is now forgotten.

Our Author why attacked in the character of an *Expoſitor*.

Of a piece with the diſcernment which enables a man to perceive, and with the courage which enables him to avow, the defects of a ſyſtem of inſtitutions, is that accuracy of conception which enables him to give a clear account of it. No wonder then, in a treatiſe partly of the *expoſitory* claſs, and partly of the *cenſorial*, that if the latter department is filled with imbecillity, ſymptoms of kindred weakneſs ſhould characterize the former.

The former department, however, of our Author's work, is what, on its own account merely, I ſhould ſcarce have found myſelf diſpoſed to intermeddle with. The buſineſs of ſimple *expoſition* is a harveſt in which there ſeemed no likelihood of there being any want of labourers: and into which therefore I had little ambition to thruſt my ſickle.

At any rate, had I ſat down to make a report of it in this character alone, it would have been with feelings very different from thoſe of which I now am conſcious, and in a tone very different from that which I perceive myſelf to have aſſumed. In determining what conduct to obſerve reſpecting it, I ſhould have conſidered whether the taint of error ſeemed to confine itſelf it to parts, or to diffuſe itſelf

through

through the whole. In the latter caſe, the leaſt invidious, and conſidering the bulk of the work, the moſt beneficial courſe would have been to have taken no notice of it at all, but to have ſat down and tried to give a better. If not the whole in general, but ſcattered poſitions only had appeared exceptionable, I ſhould have ſat down to rectify thoſe poſitions with the ſame apathy with which they were advanced. To fall in an adverſe way upon a work ſimply *expoſitory*, if that were all there were of it, would have been alike ungenerous and unneceſſary. In the involuntary errors of the *underſtanding* there can be little to excite, or at leaſt to juſtify, reſentment. That which alone, in a manner, calls for rigid cenſure, is the ſiniſter bias of the *affections*. If then I may ſtill continue to mention as ſeparate, parts which in the work itſelf are ſo intimately, and, indeed, undiſtinguiſhably blended, it is the *cenſorial* part alone that has drawn from me that ſort of animadverſion I have been led to beſtow indiſcriminately on the whole. To lay open, and if poſſible ſupply, the imperfections of the *other*, is an operation that might indeed of itſelf do ſervice; but that which I thought would do ſtill more ſervice, was the weakening the authority of *this*.

Our Author why attacked in the character of an *Expoſitor*.

Under the ſanction of a great name every ſtring

Our Author why attacked in the character of an *Expoſitor*.

of words however unmeaning, every opinion however erroneous, will have a certain currency. Reputation adds weight to ſentiments from whence no part of it aroſe, and which had they ſtood alone might have drawn nothing, perhaps, but contempt. Popular fame enters not into nice diſtinctions. Merit in one department of letters affords a natural, and in a manner irrecuſable preſumption of merit in another, eſpecially if the two departments be ſuch between which there is apparently a cloſe alliance.

Wonderful, in particular, is that influence which is gained over young minds, by the man who on account of whatever claſs of merit is eſteemed in the character of a *preceptor*. Thoſe who have derived, or fancy themſelves to have derived knowledge from what he knows, or appears to know, will naturally be for judging as he judges: for reaſoning as he reaſons; for approving as he approves; for condemning as he condemns. On theſe accounts it is, that when the general complexion of a work is unſound, it may be of uſe to point an attack againſt the whole of it without diſtinction, although ſuch parts of it as are noxious as well as unſound be only ſcattered here and there.

On theſe conſiderations then it may be of uſe to ſhew, that the work before us, in ſpite of the merits which recommend it ſo powerfully to the

imagination

imagination and to the ear, has no better title on one account than on another, to that influence which, were it to paſs unnoticed, it might continue to exerciſe over the judgement.

Our Author why attacked in the character of an *Expoſitor*.

The Introduction is the part to which, for reaſons that have been already ſtated, it was always my intention to confine myſelf. It is but a part even of this Introduction that is the ſubject of the preſent Eſſay. What determined me to begin with this ſmall part of it is, the facility I found in ſeparating it from every thing that precedes or follows it. This is what will be more particularly ſpoken to in another place [*i*].

It is not that this part is among thoſe which ſeemed moſt open to animadverſion. It is not that ſtronger traces are exhibited in this part than in another of that ſpirit in our Author which ſeems ſo hoſtile to Reformation, and to that Liberty which is Reformation's harbinger.

It is not here that he tramples on the right of private judgment, that baſis of every thing that an Engliſhman holds dear [*k*]. It is not here, in particular, that he inſults our underſtandings with nu-

Reprehenſible paſſages from the work at large.

[*i*] See the enſuing Introduction.

[*k*] See note [*a*]

gatory

Reprehenſible paſſages from the work at large.

gatory reaſons; ſtands forth the profeſſed champion of religious intolerance; or openly ſets his face againſt civil reformation.

It is not here, for example, he would perſuade us, that a trader who occupies a booth at a fair is a *fool* for his pains; and on that account no fit object of the Law's protection [*l*].

It is not here that he gives the preſence of *one* man at the *making* of a Law, as a *reaſon* why *ten thouſand* others that are to *obey* it, need know nothing of the matter [*m*].

It

[*l*] "Burglary*," ſays our Author, "cannot be "committed in a tent or a booth erected in a market "fair; though the owner may lodge therein: *for* the "Law regards thus highly nothing but permanent edi-"fices; a houſe, or church; the wall, or gate of a "town; and it is the *folly* of the owner to lodge in ſo "fragile a tenement." To ſave himſelf from this charge of folly, it is not altogether clear which of two things the trader ought to do: quit his buſineſs and not go to the fair at all: or leave his goods without any body to take care of them.

[*m*] Speaking of an Act of Parliament†, "There "needs," he ſays, "no formal promulgation to give "it the force of a Law, as was neceſſary by the Civil "Law with regard to the Emperor's Edicts: *becauſe*

* 4 Comm. Ch. XVI. p. 226. † 1 Comm. Ch. II. p. 178.

"every

It is not here, that after telling us, in expreſs terms, there muſt be an "actual breaking" to make burglary, he tells us, in the ſame breath, and in terms equally expreſs, where burglary may be *without* actual breaking; and this *becauſe* "the Law "will not ſuffer itſelf to be trifled with [*n*]."

Reprehenſible paſſages from the work at large.

It

"every man in England is, *in judgment of Law*, party "to the making of an Act of Parliament, being pre-"ſent thereat *by his repreſentatives*." This, for ought I know, may be good *judgment of Law*; becauſe any thing may be called judgment of Law, that comes from a Lawyer who has got a name: it ſeems, however, not much like any thing that can be called *judgment of common ſenſe*. This notable piece of *aſtutia* was originally, I believe, judgment of Lord Coke: it from thence became judgment of our Author: and may have been judgment of more Lawyers than I know of before and ſince. What grieves me is, to find many men of the beſt affections to a cauſe which needs no ſophiſtry, bewildered and bewildering others with the like jargon.

[*n*] His words are *, *There muſt be an actual breaking*, "not a mere legal *clauſum fregit* (by leaping over "inviſible ideal boundaries, which may conſtitute a "civil treſpaſs) but a *ſubſtantial* and *forcible irrup-"tion*." In the next ſentence but two he goes on, and ſays,—"But to come down a chimney *is* held a burg-"larious entry; for that is as much cloſed as the na-

* 4 Comm. Ch. XVI. p. 226.

"ture

Reprehenſible paſſages from the work at large.

It is not here, that after relating the Laws, which peaceable Chriſtians are made puniſhable for worſhipping God according to their conſciences, he pronounces with equal peremptorineſs and compla-

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" ture of things will permit. So alſo to knock at a " door, and upon opening it to puſh in, with a felo- " nious intent; or under pretence of taking lodgings, " to fall upon the landlord and rob him; or to pro- " cure a conſtable to gain admittance, in order to " ſearch for traitors, and then to bind the conſtable " and rob the houſe; *all theſe entries have been ad-* " *judged burglarious, though there was no actual break-* " *ing: for* the Law will not ſuffer itſelf to be trifled " with by ſuch evaſions." ... Can it be more egregiouſly trifled with than by ſuch *reaſons?*

I muſt own I have been ready to grow out of conceit with theſe uſeful little particles, *for, becauſe, ſince,* and others of that fraternity, from ſeeing the drudgery they are continually put to in theſe Commentaries. The appearance of any of them is a ſort of warning to me to prepare for ſome tautology, or ſome abſurdity; for the ſame thing diſhed up over again in the ſhape of a reaſon for itſelf: or for a reaſon which, if a diſtinct one, is of the ſame ſtamp as thoſe we have juſt ſeen. Other inſtances of the like hard treatment given to theſe poor particles will come under obſervation in the body of this eſſay. As to reaſons of the firſt-mentioned claſs, of them one might pick out enough to fill a little volume.

cency,

cency that every thing, yes, "every thing is as it "ſhould be [o]."

Reprehenſible paſſages from the work at large.

It is not here, that he commands us to believe, and that on pain of forfeiting all pretenſions to either

[o] "In what I have now ſaid," ſays he *, "I would "not be underſtood to derogate from the rights of the "national Church, or to favour a looſe latitude of pro- "pagating any crude undigeſted ſentiments in reli- "gious matters. Of *propagating*, I ſay; for the bare en- "tertaining them, without an endeavour to diffuſe them, "ſeems *hardly* cognizable by any human authority. I "only mean to illuſtrate the excellence of our preſent "eſtabliſhment, by looking back to former times. *Every "thing is now as it ſhould be:* unleſs, perhaps, that "hereſy ought to be more ſtrictly defined, and no "proſecution permitted, even in the Eccleſiaſtical "Courts, till the tenets in queſtion are by proper au- "thority previouſly declared to be heretical. Under "theſe reſtrictions it ſeems *neceſſary* for the ſupport "of the national religion," (the national religion being ſuch, we are to underſtand, as would not be able to ſupport itſelf were any one at liberty to make objections to it) "that the officers of the Church ſhould "have power to cenſure heretics, but not to exterminate or deſtroy them."

☞ Upon looking into a later edition (the fifth) I find this paſſage has undergone a modification. After "*Every thing is now as it ſhould be,*" is added, "*with*

* 4 Comm. Ch. IV. p. 49.

"*reſpect*

Reprehensible passages from the work at large.

either "sense or probity," that the system of our jurisprudence is, in the whole and every part of it, the very quintessence of perfection [*p*].

It

"*respect to the spiritual cognizance, and spiritual punish-*
"*ment of heresy.*" After "*the governors of the Church*
"*should have power to censure heretics,*" is added, "*but*
"*not to harrass them with temporal penalties, much less to*
"*exterminate or destroy them.*"

How far the mischievousness of the original text has been cured by this amendment, may be seen from Dr. Furneaux, Lett. II. p. 30, 2d edit.

[*p*] 1 Comm. 140. I would not be altogether positive, how far it was he meant this persuasion should extend itself in point of time: whether to those institutions only that happened to be in force at the individual instant of his writing: or whether to such opposite institutions also as, within any given distance of time from that instant, either *had* been in force, or were *about* to be.

His words are as follows: "All these rights and
"liberties it is our birthright to enjoy entire; unless
"where the Laws of our country have laid them under
"necessary restraints. Restraints in themselves so
"gentle and moderate, as will appear upon further
"enquiry, that no man of *sense* or *probity* would wish
"to see them slackened. For *all* of us have it in our
"choice to do *every thing* that a *good* man would desire
"to do; and are restrained from nothing, but what
"would be pernicious either to ourselves or our fel-
"low citizens."

It is not here that he assures us in point of fact, that there never *has* been an alteration made in the Law that men have not afterwards found reason to regret [*q*].

Reprehensible passages from the work at large.

It

If the Reader would know what these rights and liberties are, I answer him out of the same page, they are those, "in opposition to one or other of which "*every* species of compulsive tyranny and oppression "must act, having no other object upon which it can "*possibly* be employed." The liberty, for example, of worshipping God without being obliged to declare a belief in the XXXIX Articles, is a liberty that no "*good man*,"—"no man of sense or probity," "would "wish" for.

[*q*] 1 Comm. 70. If no reason can be found for an institution, we are to *suppose* one: and it is upon the strength of this supposed one we are to cry it up as reasonable: It is thus that the Law *is justified of her children.*

The words are—"Not that the particular reason of "every rule in the Law can, at this distance of time, "be always precisely assigned; but it is sufficient "that there be nothing in the rule *flatly* contradictory "to reason, and then the Law will *presume* it to be "well founded. And it hath been an antient observa-"tion in the Laws of England," (he might with as good ground have added—*and in all other Laws*) "That whenever a standing rule of Law, of which "the reason, perhaps, could not be remembered or dis-"cerned, hath been [*wantonly*] broke in upon by "*statutes* or *new resolutions*, the wisdom of the rule "hath

Reprehenſible paſſages from the work at large.

It is not here that he turns the Law into a Caſtle,

" hath in the end appeared from the inconveniencies " that have followed the innovation."

When a ſentiment is expreſſed, and whether from caution, or from confuſion of ideas, a clauſe is put in by way of qualifying it that turns it into nothing, in this caſe if we would form a fair eſtimate of the tendency and probable effect of the whole paſſage, the way is, I take it, to conſider it as if no ſuch clauſe were there. Nor let this ſeem ſtrange. Taking the qualification into the account, the ſentiment would make no impreſſion on the mind at all: if it makes any, the qualification is dropped, and the mind is affected in the ſame manner nearly as it would be were the ſentiment to ſtand unqualified.

This, I think, we may conclude to be the caſe with the paſſage above-mentioned. The word " *wantonly*" is, in purſuance of our Author's ſtanding policy, put in by way of ſalvo. *With* it the ſentiment is as much as comes to nothing. *Without* it, it would be extravagant. Yet in this extravagant form it is, probably, if in any, that it paſſes upon the Reader.

The pleaſant part of the contrivance is, the mentioning of " *Statutes*" and " Reſolutions" (Reſolutions to wit, that is Deciſions, of Courts of Juſtice) in the ſame breath; as if whether it were by the one of them or the other that a rule of Law was broke in upon, made no difference. By a *Reſolution* indeed, a *new* Reſolution, to break in upon a *ſtanding* rule, is a practice that in good truth is big with miſchief. But this miſchief

"Caſtle, for the purpoſe of oppoſing every idea of "fundamental"

Reprehenſible paſſages from the work at large.

chief on what does it depend? Upon the rule's being a *reaſonable* one? By no means: but upon it's being a *ſtanding*, an eſtabliſhed one. Reaſonable or not reaſonable, is what makes comparatively but a trifling difference.

A new reſolution made in the teeth of an old-eſtabliſhed rule is miſchievous—on what account? In that it puts men's expectations univerſally to a fault, and ſhakes whatever confidence they may have in the ſtability of any rules of Law, reaſonable or not reaſonable: that ſtability on which every thing that is valuable to a man depends. Beneficial be it in ever ſo high a degree to the party in whoſe favour it is made, the benefit it is of to *him* can never be ſo great as to outweigh the miſchief it is of to the community at large. Make the beſt of it, it is general evil for the ſake of partial good. It is what Lord Bacon calls ſetting the whole houſe on fire, in order to roaſt one man's eggs.

Here then the *ſalvo* is not wanted: a "new reſo-"lution can never be acknowledged to be contrary to "a ſtanding rule," but it muſt on that very account be acknowledged to be "*wanton*." Let ſuch a reſolution be made, and "inconveniencies" in abundance will ſure enough enſue: and then will appear—what? not by any means "the wiſdom of the rule," but, what is a very different thing, the folly of breaking in upon it.

It were almoſt ſuperfluous to remark, that nothing of all this applies in general to a ſtatute: though particular Statutes may be conceived that would thwart

Reprehenſible paſſages from the work at large.

"fundamental" reparation [r].

It

the courſe of expectation, and by that means produce miſchief in the ſame way in which it is produced by irregular reſolutions. A new ſtatute, it is manifeſt, cannot, unleſs it be ſimply a declaratory one, be made in any caſe, but it muſt break in upon ſome ſtanding rule of Law. With regard to a Statute then to tell us that a "wanton" one has produced "inconveniencies," what is it but to tell us that a thing that has been miſchievous has produced miſchief?

Of this temper are the arguments of all thoſe doating politicians, who, when out of humour with a particular innovation without being able to tell why, ſet themſelves to declaim againſt *all* innovation, becauſe it is innovation. It is the nature of owls to hate the light: and it is the nature of thoſe politicians who are wiſe by rote, to deteſt every thing that forces them either to find (what, perhaps, is impoſſible) reaſons for a favourite perſuaſion, or (what is not endurable) to diſcard it.

[r] 3 Comm. 268, at the end of Ch. XVII. which concludes with three pages againſt Reformation. Our Author had better, perhaps, on this occaſion, have kept clear of allegories: he ſhould have conſidered whether they might not be retorted on him with ſevere retaliation. He ſhould have conſidered, that it is not eaſier to *him* to turn the Law into a Caſtle, than it is to the imaginations of impoveriſhed ſuitors to people it with Harpies. He ſhould have thought of the den

It is not here that he turns with ſcorn upon thoſe beneficent Legiſlators, whoſe care it has been to pluck the maſk of Myſtery from the face of Juriſprudence [s].

Reprehenſible paſſages from the work at large.

If

of Cacus, to whoſe unfeebled optics, to whoſe habits of dark and ſecret rapine, nothing was ſo hateful, nothing ſo dangerous, as the light of day.

[s] 3 Comm. 322. It is from the deciſions of Courts of Juſtice that thoſe rules of Law are framed, on the knowledge of which depend the life, the fortune, the liberty of every man in the nation. Of theſe deciſions the Records are, according to our Author [1. Comm. 71.] the moſt authentic hiſtories. Theſe Records were, till within theſe five-and-forty years, in Law-Latin: a language which, upon a high computation, about one man in a thouſand uſed to fancy himſelf to underſtand. In this Law-Latin it is that our Author is ſatisfied they ſhould have been continued, becauſe the pyramids of Egypt have ſtood longer than the temples of Palmyra. He obſerves to us, that the Latin language could not expreſs itſelf on the ſubject without borrowing a multitude of words from our own: which is to help convince us that of the two the former is the fitteſt to be employed. He gives us to underſtand that, taking it altogether, there could be no room to complain of it, ſeeing it was not more unintelligible than the jargon of the ſchoolmen, ſome paſſages of which he inſtances; and then he goes on, "This technical Latin continued in uſe from "the time of its firſt introduction till the ſubver-

Reprehenſible paſſages from the work at large.

If here *, as every where, he is eager to hold the

* V. infra, Ch. III. par. VII. p. 103.

"ſion of our antient conſtitution under Cromwell; "when, among many other innovations on the body of "the Law, ſome for the better and ſome for the worſe, "the language of our Records was altered and turned "into Engliſh. But at the Reſtoration of King "Charles, this *novelty* was no longer countenanced; "the practiſers finding it very difficult to expreſs them-"ſelves ſo conciſely or ſignificantly in any other lan-"guage but the Latin. And thus it continued with-"out any ſenſible inconvenience till about the year "1730, when it was again thought proper that the "Proceedings at Law ſhould be *done* into Engliſh, and "it was accordingly ſo ordered by ſtatute 4 Geo. II. "c. 26.

"This was done (continues our Author) in order "that the common people might have knowledge and "underſtanding of what was alledged or done for and "againſt them in the proceſs and pleadings, the "judgment and entries in a cauſe. Which purpoſe I "know not how well it has anſwered; but am *apt to* "*ſuſpect* that the people are now, after many years "experience, *altogether* as ignorant in matters of law "as before."

In this ſcornful paſſage the words *novelty—done* into Engliſh—*apt* to *ſuſpect—altogether* as ignorant—ſufficiently ſpeak the affection of the mind that dictated it. It is thus that our Author chuckles over the ſuppoſed defeat of the Legiſlature with a fond exultation

the cup of flattery to high ſtation, he has ſtopt ſhort,

Reprehenſible paſſages from the work at large.

which all his diſcretion could not perſuade him to ſuppreſs.

The caſe is this. A large portion of the body of the Law was, by the bigotry or the artifice of Lawyers, locked up in an illegible character, and in a foreign tongue. The ſtatute he mentions obliged them to give up their hieroglyphicks, and to reſtore the native language to its rights.

This was doing much; but it was not doing every thing. Fiction, tautology, technicality, circuity, irregularity, inconſiſtency remain. But above all the peſtilential breath of Fiction poiſons the ſenſe of every inſtrument it comes near.

The conſequence is, that the Law, and eſpecially that part of it which comes under the topic of Procedure, *ſtill* wants much of being generally intelligible. The fault then of the Legiſlature is their not having done *enough*. His quarrel with them is for having done any thing at all. In doing what they did, they ſet up a light, which, obſcured by many remaining clouds, is ſtill but too apt to prove an *ignis fatuus*: our Author, inſtead of calling for thoſe clouds to be removed, deprecates all light, and pleads for total darkneſs.

Not content with repreſenting the alteration as uſeleſs, he would perſuade us to look upon it as miſchievous. He ſpeaks of "inconveniences." What theſe inconveniences are it is pleaſant to obſerve.

In the firſt place, many young practiſers, ſpoilt by the indulgence of being permitted to carry on their buſi-

Reprehenſible paſſages from the work at large.

ſhort, however, in this place, of idolatry [*t*]. It

neſs in their mother-tongue, know not how to read a Record upon the old plan. "Many Clerks and Attornies," ſays our Author, "are hardly able to "read, much leſs to underſtand a Record of ſo modern "a date as the reign of George the Firſt."

What the mighty evil is here, that is to outweigh the miſchief of almoſt univerſal ignorance, is not altogether clear: Whether it is, that certain Lawyers, in a caſe that happens very rarely, may be obliged to get aſſiſtance: or that the buſineſs in ſuch a caſe may paſs from thoſe who do *not* underſtand it to thoſe who do.

In the next place, he obſerves to us, "it has much "enhanced the expence of all legal proceedings: for "ſince the practiſers are confined (for the ſake of the "ſtamp-duties, which are thereby conſiderably en-"creaſed) to write only a ſtated number of words in a "ſheet; and as the Engliſh language, through the "multitude of its particles, is much more verboſe than "the Latin; it follows, that the number of ſheets "muſt be very much augmented by the change."

I would fain perſuade myſelf, were it poſſible, that this unhappy ſophiſm could have paſſed upon the inventor. The ſum actually levied on the public on that ſcore is, upon the whole, either a proper ſum or it is not. If it *is*, why mention it as an evil? If it is *not*, what more obvious remedy than to ſet the duties lower?

After all, what ſeems to be the real evil, notwithſtanding our Author's unwillingneſs to believe it, is, that

It is not then, I ſay, *this* part, it is not even any part of that Introduction, to which alone I have any thoughts of extending my examination, that is the

Reprehenſible paſſages from the work at large.

that by means of this alteration, men at large are in a ſomewhat better way of knowing what their Lawyers are about: and that a diſintereſted and enterprizing Legiſlator, ſhould happily ſuch an one ariſe, would now with ſomewhat leſs difficulty be able to ſee before him.

[*t*] In the Seventh Chapter of the Firſt Book, The King has "*attributes**;" he poſſeſſes "*ubiquity*†;" he is "*all-perfect* and *immortal*‡."

Theſe childiſh paradoxes, begotten upon ſervility by falſe wit, are not more adverſe to manly ſentiment, than to accurate apprehenſion. Far from contributing to place the inſtitutions they are applied to in any clear point of view, they ſerve but to dazzle and confound, by giving to Reality the air of Fable. It is true, they are not altogether of our Author's invention: it is he, however, that has revived them, and that with improvements and additions.

One might be apt to ſuppoſe they were no more than ſo many tranſient flaſhes of ornament: it is quite otherwiſe. He dwells upon them in ſober ſadneſs. The attribute of "*ubiquity*," in particular, he lays hold of, and makes it the baſis of a chain of reaſoning. He ſpins it out into conſequences: he makes one thing "*follow*" from it, and another thing be ſo and ſo

* 1 Comm. 242.

† 1 Comm. Ch. VII. p. 234, 238, 242, Firſt Edition.

‡ 1 Comm. Ch. VII. p. 260, Firſt Edition.

Reprehenſible paſſages from the work at large.

the principal ſeat of that poiſon, againſt which it was the purpoſe of this attempt to give an antidote. The ſubject handled in this part of the work is ſuch, as admits not of much to be ſaid in the perſon of the Cenſor. Employed, as we have ſeen, in ſettling matters of a preliminary nature—in drawing out-

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" for the ſame *reaſon*:" and he uſes emphatic terms, as if for fear he ſhould not be thought to be in earneſt. " From the ubiquity," ſays our Author [1 Comm. p. 260] " it *follows*, that the King can never be non-" ſuit; *for* a nonſuit is the deſertion of the ſuit or " action by the non-appearance of the plaintiff in " Court."——" For the ſame reaſon alſo the King " is not ſaid to appear by his Attorney, as other men " do; for he always appears in contemplation of Law " in his *own proper* perſon."

This is the caſe ſo ſoon as you come to this laſt ſentence of the paragraph. For ſo long as you are at the laſt but two, " it is the regal office, and *not* the royal " perſon, that is always preſent." All this is ſo drily and ſo ſtrictly true, that it ſerves as the ground work of a metaphor that is brought in to embelliſh and enliven it. The King, we ſee, *is*, that is to ſay is *not*, preſent in Court. The King's Judges are preſent too. So far is plain downright truth. Theſe Judges, then, ſpeaking metaphorically, are ſo many looking-glaſſes, which have this ſingular property, that when a man looks at them, inſtead of ſeeing his own face in them, he ſees the King's. " His Judges," ſays our Author, " are the mirror by which the King's image is re-" flected."

lines,

lines, it is not in this part that there was occaſion to enter into the details of any particular inſtitution. If I choſe the Introduction then in preference to any other part, it was on account of its affording the faireſt ſpecimen of the whole, and not on account of its affording the greateſt ſcope for cenſure.

Reprehenſible paſſages from the work at large.

Let us reverſe the tablet. While with this freedom I expoſe our Author's ill deſerts, let me not be backward in acknowledging and paying homage to his various merits: a juſtice due, not to him alone, but to that Public, which now for ſo many years has been dealing out to him (it cannot be ſuppoſed altogether without title) ſo large a meaſure of its applauſe.

Its merits.

Correct, elegant, unembarraſſed, ornamented, the *ſtyle* is ſuch, as could ſcarce fail to recommend a work ſtill more vitious in point of *matter* to the multitude of readers.

He it is, in ſhort, who, firſt of all inſtitutional writers, has taught Juriſprudence to ſpeak the language of the Scholar and the Gentleman: put a poliſh upon that rugged ſcience: cleanſed her from the duſt and cobwebs of the office: and if he has not enriched her with that preciſion that is drawn only from the ſterling treaſury of the ſciences, has decked her out, however, to advantage, from the toilette of claſſic erudition: enlivened her with metaphors

Its merits.

taphors and alluſions: and ſent her abroad in ſome meaſure to inſtruct, and in ſtill greater meaſure to entertain, the moſt miſcellaneous and even the moſt faſtidious ſocieties.

The merit to which, as much perhaps as to any, the work ſtands indebted for its reputation, is the enchanting harmony of its numbers: a kind of merit that of itſelf is ſufficient to give a certain degree of celebrity to a work devoid of every other. So much is man governed by the ear.

The function of the Expoſitor may be conceived to divide itſelf into two branches: that of *hiſtory*, and that of ſimple *demonſtration*. The buſineſs of hiſtory is to repreſent the Law in the ſtate it *has* been in, in paſt periods of its exiſtence: the buſineſs of ſimple demonſtration in the ſenſe in which I will take leave to uſe the word, is to repreſent the Law in the ſtate it *is* in for the time being [*v*].

Again,

[*v*] The word *demonſtration* may here ſeem, at firſt ſight, to be out of place. It will be eaſily perceived that the ſenſe here put upon it is not the ſame with that in which it is employed by Logicians and Mathematicians. In our own language, indeed, it is not very familiar in any other ſenſe than theirs: but on the Continent it is currently employed in many other ſciences.

Its merits.

Again, to the head of demonſtration belong the ſeveral buſineſſes of *arrangement*, *narration*, and *conjecture*. Matter of narration it may be called, where the Law is ſuppoſed to be explicit, clear, and ſettled: matter of conjecture or interpretation, where it is obſcure, ſilent, or unſteady. It is matter of arrangement to *diſtribute* the ſeveral real or ſuppoſed inſtitutions into different maſſes, for the purpoſe of a general ſurvey; to determine the *order* in which thoſe maſſes ſhall be brought to view; and to find for each of them a *name*.

The buſineſſes of narration and interpretation are converſant chiefly about particular inſtitutions. Into the details of particular inſtitutions it has not been my purpoſe to deſcend. On theſe topics, then, I may ſay, in the language of procedure, *non ſum informatus*. Viewing the work in this light, I have nothing to add to or to except againſt the public voice.

Hiſtory is a branch of inſtruction which our Author, though not rigidly neceſſary to his deſign, called in, not without judgment, to caſt light and

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ſciences. The French, for example, have their *demonſtrateurs de botanique, d'anatomie, de phyſique expérimentale, &c.* I uſe it out of neceſſity; not knowing of any other that will ſuit the purpoſe.

ornament

Its merits.

ornament on the dull work of ſimple *demonſtration*: this part he has executed with an elegance which ſtrikes every one: with what fidelity, having not very particularly examined, I will not take upon me to pronounce.

Among the moſt difficult and the moſt important of the functions of the *demonſtrator* is the buſineſs of *arrangement*. In this our Author has been thought, and not, I conceive, without juſtice, to excell; at leaſt in compariſon of any thing in that way that has hitherto appeared. 'Tis to him we owe ſuch an arrangement of the elements of Juriſprudence, as wants little, perhaps, of being the beſt that a technical nomenclature will admit of. A technical nomenclature, ſo long as it is admitted to mark out and denominate the principal heads, ſtands an invincible obſtacle to every other than a technical arrangement. For to *denominate* in general terms, what is it but to arrange? and to arrange under heads, what is it but to *denominate* upon a large ſcale? A technic[illegible]rement, governed then in this manner, by a technical nomenclature, can never be otherwiſe than *confuſed* and *unſatisfactory*. The reaſon will be ſufficiently apparent, when we underſtand what ſort of an arrangement that muſt be which can be properly termed a *natural* one.

That

That arrangement of the materials of any ſcience may, I take it, be termed a *natural* one, which takes ſuch properties to characterize them by, as men in general are, by the common conſtitution of man's *nature*, diſpoſed to attend to: ſuch, in other words, as *naturally*, that is readily, engage, and firmly fix the attention of any one to whom they are pointed out. The materials, or elements here in queſtion, are ſuch actions as are the objects of what we call Laws or Inſtitutions.

Idea of a *natural* arrangement.

Now then, with reſpect to actions in general, there is no property in them that is calculated ſo readily to engage, and ſo firmly to fix the attention of an obſerver, as the *tendency* they may have *to*, or *divergency* (if one may ſo ſay) *from*, that which may be ſtyled the common *end* of all of them. The end I mean is *Happineſs* [*w*]: and this *tendency* in any act is what we ſtyle its *utility*: as this *divergency* is that

[*w*] Let this be taken for a truth upon the authority of *Ariſtotle*: I mean by thoſe, who like the authority of Ariſtotle better than that of their own experience. Πασα τεχνη, ſays that philoſopher, και πασα μεθοδος· ομοιως δε πραξις τε και προαιρεσις, αγαθου τινος εφιεσθαι δοκει· διο καλως απεφηναντο τ' αγαθον, ου παντα εφιεται. Διαφορα δε τις φαινεται των (underſtand τοιουτων) ΤΕΛΩΝ.—Ariſt. Eth. ad Nic. L. I. c. 1.

to

Idea of a *natural* arrangement.

to which we give the name of *miſchievouſneſs*. With reſpect then to ſuch actions in particular as are among the objects of the Law, to point out to a man the *utility* of them or the miſchievouſneſs, is the only way to make him ſee *clearly* that property of them which every man is in ſearch of; the only way, in ſhort, to give him *ſatisfaction*.

From *utility* then we may denominate a *principle*, that may ſerve to preſide over and govern, as it were, ſuch arrangement as ſhall be made of the ſeveral inſtitutions or combinations of inſtitutions that compoſe the matter of this ſcience: and it is this principle, that by putting its ſtamp upon the ſeveral names given to thoſe combinations, can alone render *ſatisfactory* and *clear* any arrangement that can be made of them.

Governed in this mannner by a principle that is recognized by all men, the ſame arrangement that would ſerve for the juriſprudence of any one country, would ſerve with little variation for that of any other.

Yet more. The miſchievouſneſs of a bad Law would be detected, at leaſt the utility of it would be rendered ſuſpicious, by the difficulty of finding a place for it in ſuch an arrangement: while, on the other hand, a *technical* arrangement is a ſink that with equal facility will ſwallow any garbage that is thrown into it.

That

That this advantage may be poſſeſſed by a natural arrangement, is not difficult to conceive. Inſtitutions would be characterized by it in the only univerſal way in which they can be characterized; by the nature of the ſeveral *modes* of *conduct* which, by prohibiting, they conſtitute *offences* [x].

Idea of a *natural* arrangement.

Theſe offences would be collected into claſſes denominated by the various modes of their *divergency* from the common *end*; that is, as we have ſaid, by their various forms and degrees of *miſchievouſneſs*: in a word, by thoſe properties which are *reaſons* for their being made *offences*: and whether any ſuch mode of conduct poſſeſſes any ſuch property is a queſtion of experience [y]. Now, a bad Law is that which prohibits a mode of conduct that is *not* miſchievous [z]. Thus would it be found impracticable to place the mode of conduct prohibited by a bad law under any denomination of

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[x] Offences, the reader will remember, may as well be offences of *omiſſion*, as of *commiſſion*. I would avoid the embarraſſment of making ſeparate mention of ſuch Laws as exert themſelves in *commanding*. 'Tis on this account I uſe the phraſe "*mode of conduct*," which includes *omiſſions* or *forbearances*, as well as *acts*.

[y] See note [ee].

[z] See note [*].

offence,

Idea of a *natural* arrangement.

offence, without aſſerting ſuch a matter of fact as is contradicted by experience. Thus cultivated, in ſhort, the ſoil of Juriſprudence would be found to repel in a manner every evil inſtitution; like that country which refuſes, we are told, to harbour any thing venomous in its boſom.

The *ſynopſis* of ſuch an arrangement would at once be a compendium of *expoſitory* and of *cenſorial* Juriſprudence: nor would it ſerve more effectually to inſtruct the *ſubject*, than it would to juſtify or reprove the *Legiſlator*.

Such a ſynopſis, in ſhort, would be at once a map, and that an univerſal one, of Juriſprudence as it *is*, and a ſlight but comprehenſive ſketch of what it *ought to be*. For, the *reaſons* of the ſeveral inſtitutions comprized under it would ſtand expreſſed, we ſee, and that uniformly (as in our Author's ſynopſis they do in ſcattered inſtances) by the names given to the ſeveral claſſes under which thoſe inſtitutions are comprized. And what reaſons? Not *technical* reaſons, ſuch as none but a Lawyer gives, nor any but a Lawyer would put up with [*aa*]; but reaſons,

[*aa*] *Technical* reaſons: ſo called from the Greek τεχνη, which ſignifies an art, ſcience, or profeſſion.

Utility

reaſons ſuch as were they in themſelves what they might and ought to be, and expreſſed too in the manner they might and ought to be, any man might ſee the force of as well as he.

Idea of a *natural* arrangement.

Nor in this is there any thing that need ſurprize us. The conſequences of any Law, or of any act which is made the object of a Law, the only conſequences that men are at all intereſted in, what are they but *pain* and *pleaſure*? By ſome ſuch words then as *pain* and *pleaſure*, they may be expreſſed: and *pain* and *pleaſure* at leaſt, are words which a man has no need, we may hope, to go to a

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Utility is that ſtandard to which men in general, (except in here and there an inſtance where they are deterred by prejudices of the religious claſs, or hurried away by the force of what is called *ſentiment* or *feeling*.) Utility, as we have ſaid, is the ſtandard to which they refer a Law or inſtitution in judging of its title to approbation or diſapprobation. Men of Law, corrupted by intereſts, or ſeduced by illuſions, which it is not here our buſineſs to diſplay, have deviated from it much more frequently, and with much leſs reſerve. Hence it is that ſuch reaſons as paſs with Lawyers, and with no one elſe, have got the name of *technical* reaſons; reaſons peculiar to the *art*, peculiar to the profeſſion.

Idea of a *natural* arrangement.

Lawyer to know the meaning of [*bb*]. In the ſynopſis then of that ſort of arrangement which alone deſerves the name of a natural one, terms ſuch as theſe, terms which if they can be ſaid to belong to any ſcience, belong rather to Ethics than to Juriſprudence, even than to univerſal Juriſprudence, will engroſs the moſt commanding ſtations.

What then is to be done with thoſe names of claſſes that are purely technical?—With offences, for example, againſt prerogative, with miſpriſions, contempts, felonies, præmunires [*cc*]? What relation is it that theſe mark out between the Laws that concern the ſorts of acts they are reſpectively put to ſignify, and that *common end* we have been ſpeaking of? Not any. In a natural arrangement what then would become of them? They would either be ba-

[*bb*] The *reaſon* of a Law, in ſhort, is no other than the *good* produced by the mode of conduct which it enjoins, or (which comes to the ſame thing) the *miſchief* produced by the mode of conduct which it prohibits. This *miſchief* or this *good*, if they be real, cannot but ſhew themſelves ſomewhere or other in the ſhape of *pain* or *pleaſure*.

[*cc*] See in the Synoptical Table prefixed to our Author's *Analyſis*, the laſt page comprehending Book IV.

niſhed

niſhed at once to the region of *quiddities* and *ſubſtantial forms*; or if, and in deference to attachments too inveterate to be all at once diſſolved, they were ſtill to be indulged a place, they would be ſtationed in the corners and bye-places of the Synopſis: ſtationed, not as now to *give* light, but to *receive* it. But more of this, perhaps, at ſome future time.

Idea of a *natural* arrangement.

To return to our Author. Embarraſſed, as a man muſt needs be, by this blind and intractable nomenclature, he will be found, I conceive, to have done as much as could reaſonably be expected of a writer ſo circumſtanced; and more and better than was ever done before by any one.

In one part, particularly, of his Synopſis*, ſeveral fragments of a ſort of method which is, or at leaſt comes near to, what may be termed a natural one [*dd*], are actually to be found. We there read of "*corporal injuries*;" of "offences againſt *peace*;" againſt "*health*;" againſt "*perſonal ſecurity* [*ee*];" "*liberty*:"—

Merits of the work reſumed.

* It is that which comprizes his IVth Book, intitled PUBLIC WRONGS.

[*dd*] *Fragmenta methodi naturalis.*—LINNÆI *Phil. Bot.* Tit. *Syſtemata*, par. 77.

[*ee*] This title affords a pertinent inſtance to exemplify the uſe that a natural arrangement may be of in

Merits of the work resumed.

"*liberty*:"—"*property*:"——light is let in, though irregularly, at various places.

In an unequal imitation of this Synopsis that has lately been performed upon what is called the *Civil Law*, *all* is technical. All, in short, is darkness. Scarce a syllable by which a man would be led to suspect, that the affair in hand were an affair that happiness or unhappiness was at all concerned in [*ff*].

To

repelling an incompetent institution. What I mean is the sort of filthiness that is termed *unnatural*. This our Author has ranked in his class of *Offences against* "*personal security*," and, in a subdivision of it, intitled "*Corporal Injuries*." In so doing, then, he has asserted a fact: he has asserted that the offence in question is an offence against personal security; is a corporal injury; is, in short, productive of unhappiness *in that way*. Now this is what, in the case where the act is committed *by consent*, is manifestly not true. *Volenti non fit injuria*. If then the Law against the offence in question had no other title to a place in the system than what was founded on this *fact*, it is plain it would have none. It would be a bad Law altogether. The mischief the offence is of to the community in this case is in truth of quite another nature, and would come under quite another class. When *against* consent, there indeed it does belong really to this class: but then it would come under another name. It would come under that of *Rape*.

[*ff*] I think it is Selden, somewhere in his *Table-talk*,

To return, once more, to our Author's Commentaries. Not even in a *cenſorial* view would I be underſtood to deem them altogether without merit. For the inſtitutions commented on, where they are capable of good reaſons, good reaſons are every now and then given: in which way, ſo far as it goes, one-half of the Cenſor's taſk is well accompliſhed. Nor is the dark ſide of the picture left abſolutely untouched. Under the head of "Trial "by Jury," are ſome very juſt and intereſting remarks on the yet-remaining imperfections of that mode

Merits of the work reſumed.

talk, that ſpeaks of a whimſical notion he had hit upon when a ſchool-boy, that with regard to *Cæſar* and *Juſtin*, and thoſe other perſonages of antiquity that gave him ſo much trouble, there was not a ſyllable of truth in any thing they ſaid, nor in fact were there ever really any ſuch perſons; but that the whole affair was a contrivance of parents to find employment for their children. Much the ſame ſort of notion is that which theſe technical arrangements are calculated to give us of Juriſprudence: which in them ſtands repreſented rather as a game at *Crambo* for Lawyers to whet their wits at, than as that Science which holds in her hand the happineſs of nations.

Let us, however, do no man wrong. Where the ſucceſs has been worſe, the difficulty was greater. That

Merits of the work resumed.

mode of trial*: and under that of "Assurances "by matter of Record," on the lying and extortious jargon of *Recoveries*†. So little, however, are these particular remarks of a piece with the general disposition, that shews itself so strongly throughout the work, indeed so plainly adverse to the general maxims that we have seen, that I can scarce bring myself to attribute them to our Author. Not only disorder is announced by them, but remedies, well-imagined remedies, are pointed out. One would think some Angel had been sowing wheat among our Author's tares [*gg*].

With

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detestable chaos of institutions which the Analyst last-mentioned had to do with, is still more embarassed with a technical nomenclature than our own.

* 3 Comm. Ch. XXIII. p. 387.

† 2 Comm. Ch. XXI. p. 360.

[*gg*] The difference between a generous and determined affection, and an occasional, and as it were forced contribution, to the cause of reformation, may be seen, I think, in these Commentaries, compared with another celebrated work on the subject of our Jurisprudence. Mr. Barrington, whose agreeable Miscellany has done so much towards opening men's eyes upon this subject; Mr. Barrington, like an active General in the service of the Public, storms the

stron*g*-holds

With regard to this Eſſay itſelf, I have not much to ſay. The principal and profeſſed purpoſe of it is, to expoſe the errors and inſufficiencies of our Author. The buſineſs of it is therefore rather to *overthrow* than to *ſet up*; which latter taſk can ſeldom be performed to any great advantage where the former is the principal one.

Manner in which the preſent Eſſay has been conducted.

To guard againſt the danger of miſrepreſentation, and to make ſure of doing our Author no injuſtice, his own words are given all along: and, as ſcarce any ſentence is left unnoticed, the whole comment wears the form of what is called a perpetual one. With regard to a diſcourſe that is ſimply inſtitutional, and in which the writer builds upon a plan of his own, a great part of the ſatisfaction it can be made to afford depends upon the order and connection that are eſtabliſhed between the ſeveral parts of it. In a comment upon the work of another, no

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ſtrong-holds of chicane, whereſoever they preſent themſelves, and particularly fictions, without reſerve. Our Author, like an artful partizan in the ſervice of the profeſſion, ſacrifices a few, as if it were to ſave the reſt.

Deplorable, indeed, would have been the ſtudent's chance for ſalutary inſtruction, did not Mr. Barrington's work in ſo many inſtances, furniſh the antidote to our Author's poiſons.

Manner in which the preſent Eſſay has been conducted.

ſuch connection, or at leaſt no ſuch order, can be eſtabliſhed commodiouſly, if at all. The order of the comment is preſcribed by the order, perhaps the diſorder, of the text.

The chief employment of this Eſſay, as we have ſaid, has neceſſarily been *to overthrow*. In the little, therefore, which has been done by it in the way of *ſetting up*, my view has been not ſo much to think for the Reader, as to put him upon thinking for himſelf. This I flatter myſelf with having done on ſeveral intereſting topics; and this is all that at preſent I propoſe.

Among the few poſitions of my own which I have found occaſion to advance, ſome I obſerve which promiſe to be far from popular. Theſe it is likely may give riſe to very warm objections: objections which in themſelves I do not wonder at, and which in their motive I cannot but approve. The people are a ſet of maſters whom it is not in a man's power in every inſtance fully to pleaſe, and at the ſame time faithfully to ſerve. He that is reſolved to perſevere without deviation in the line of truth and utility, muſt have learnt to prefer the ſtill whiſper of enduring approbation, to the ſhort-lived buſtle of tumultuous applauſe.

Other paſſages too there may be, of which ſome farther explanation may perhaps not unreaſonably be

be demanded. But to give theſe explanations, and to obviate thoſe objections, is a taſk which, if executed at all, muſt be referred to ſome other opportunity. Conſiſtency forbad our expatiating ſo far as to loſe ſight of our Author: ſince it was the line of his courſe that marked the boundaries of ours.

Manner in which the preſent Eſſay has been conducted.

A FRAG-

A

FRAGMENT

ON

GOVERNMENT.

A FRAGMENT ON GOVERNMENT.

INTRODUCTION.

I.

THE ſubject of this examination, is a paſſage contained in that part of Sir W. BLACKSTONE's COMMENTARIES on the LAWS of ENGLAND, which the Author has ſtiled the INTRODUCTION. This Introduction of his ſtands divided into four Sections. The *firſt* contains his diſcourſe "*On* "*the* STUDY *of the* LAW." The *ſecond*, entitled "*Of the* NATURE *of* LAWS *in* "*general*," contains his ſpeculations concerning

INTRODUCTION.

I.

Diviſion of our Author's Introduction.

INTRODUCTION.

cerning the various objects, real or imaginary, that are in use to be mentioned under the common name of LAW. The *third*, entitled "*Of the* LAWS *of* ENGLAND," contains such general observations, relative to these last mentioned Laws, as seemed proper to be premised before he entered into the details of any parts of them in particular. In the *fourth*, entitled, "*Of the* COUNTRIES *subject to the* "LAWS *of* ENGLAND," is given a statement of the different territorial extents of different branches of those Laws.

II.

What part of it is here to be examined.

'Tis in the *second* of these Sections, that we shall find the passage proposed for examination. It occupies in the edition I happen to have before me, which is the *first* (and all the editions, I believe, are paged alike) the space of *seven* pages; from the 47th, to the 53d, inclusive.

III.

His definition of Law Municipal.

After treating of "LAW *in general*," of the "LAW of *Nature*," "LAW of *Revelation*," and "LAW of *Nations*," branches of that imaginary whole, our Author

Author comes at length to what he calls "LAW *municipal:*" that ſort of Law, to which men in their ordinary diſcourſe would give the name of Law without addition; the only ſort perhaps of them all (unleſs it be that of *Revelation*) to which the name can, with ſtrict propriety, be applied: in a word, that ſort which we ſee made in each nation, to expreſs the will of that body in it which governs. On this ſubject of LAW *Municipal* he ſets out, as a man ought, with a *definition* of the phraſe itſelf; an important and fundamental phraſe, which ſtood highly in need of a definition, and never ſo much as ſince our Author has defined it.

INTRODUCTION.

IV.

IV. A digreſſion in the middle of it. It's general contents.

This definition is uſhered in with no ſmall diſplay of accuracy. Firſt, it is given entire: it is then taken to pieces, clauſe by clauſe; and every clauſe, by itſelf, juſtified and explained. In the very midſt of theſe explanations, in the very midſt of the definition, he makes a

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ſudden ſtand. And now it bethinks him that it is a good time to give a diſſertation, or rather a bundle of diſſertations, upon various ſubjects—On the *manner* in which *Governments were* eſtabliſhed—On the different *forms* they aſſume when they *are* eſtabliſhed—On the peculiar excellence of that form which is eſtabliſhed in *this country*—On the *right*, which he thinks it neceſſary to tell us, the GOVERNMENT in every country has, of making LAWS—On the *duty* of making LAWS; which, he ſays, is alſo incumbent on the Government.—In ſtating theſe two laſt heads, I give, as near as poſſible, his own *words*; thinking it premature to engage in diſcuſſions, and not daring to decide without diſcuſſion, on the *ſenſe*.

V.

V. This digreſſion the ſubject of the preſent examination.

The digreſſion we are about to examine, is, as it happens, not at all involved with the body of the work from which it ſtarts. No mutual references or alluſions: no ſupports or illuſtrations communicated

communicated or received. It may be considered as one ſmall work inſerted into a large one; the containing and the contained, having ſcarce any other connection than what the operations of the preſs have given them. It is this diſconnection that will enable us the better to beſtow on the latter a ſeparate examination, without breaking in upon any thread of reaſoning, or any principle of Order. INTRODUCTION.

VI.

A general ſtatement of the topics touched upon in the digreſſion we are about to examine, has been given above. It will be found, I truſt, a faithful one. It will not be thought, however, much of a piece, perhaps, with the following, which our Author himſelf has given us. "This," (ſays he *, meaning an explanation he had been giving of a part of the definition above ſpoken of) "will naturally lead "us into a ſhort enquiry into the nature VI. Our Author's ſketch of the contents.

* 1. Comm. P. 47.

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" of ſociety and civil government [*a*];
" and the natural inherent right that
" belongs to the ſovereignty of a ſtate,
" wherever that ſovereignty be lodged,
" of making and enforcing Laws."

VII.

VII. Inadequate.

No very explicit mention here, we may obſerve, of the *manner* in which Governments have been eſtabliſhed, or of the different *forms* they aſſume when eſtabliſhed: no very explicit intimation that theſe were among the topics to be diſcuſſed. None at all of the *duty* of Government to make Laws: none at all

[*a*] To make ſure of doing our Author no injuſtice, and to ſhew what it is that he thought would " na-
" turally lead us into" this " enquiry," it may be proper to give the paragraph containing the explanation above mentioned. It is as follows:—" But farther:
" municipal Law is a rule of civil conduct, preſcribed
" *by the ſupreme power in a ſtate.*" " For Legiſlature,
" as was before obſerved, is the greateſt act of ſuperi-
" ority that can be exerciſed by one being over another.
" Wherefore it is requiſite, to the very eſſence of a
" Law, that it be made" (he might have added, " *or at*
" *leaſt ſupported*") " by the ſupreme power. Sovereignty
" and Legiſlature are indeed convertible terms; one
" cannot ſubſiſt without the other." 1. Comm. p. 46.

of

of the *Britiſh conſtitution*; though, of the four other topics we have mentioned, there is no one on which he has been near ſo copious as on this laſt. The *right* of Government to make Laws, that delicate and invidious topic, as we ſhall find it when explained, is that which, for the moment, ſeems to have ſwallowed up almoſt the whole of his attention. INTRODUCTION.

VIII.

VIII. Diviſion of the preſent eſſay.

Be this as it may, the contents of the diſſertation before us, taken as I have ſtated them, will furniſh us with the matter of five chapters:—one, which I ſhall entitle "FORMATION *of* GOVERNMENT"—a ſecond, "FORMS *of* GOVERNMENT"—a third, "BRITISH CONSTITUTION"—a fourth, "RIGHT *of the* SUPREME POWER *to make* LAWS"—a fifth, "DUTY *of the* SUPREME POWER *to make* LAWS."

CHAP. I.

FORMATION *of* GOVERNMENT.

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I.

THE firſt object which our Author ſeems to have propoſed to himſelf in the diſſertation we are about to examine, is to give us an idea of the *manner* in which Governments were formed. This occupies the firſt paragraph, together with part of the ſecond: for the *typographical* diviſion does not ſeem to quadrate very exactly with the *intellectual*. As the examination of this paſſage will unavoidably turn in great meaſure upon the words, it will be proper the reader ſhould have it under his eye.

I. Subject of the paſſage to be examined in the preſent chapter.

II.

II. The paſſage recited—

"The only true and natural foundations of *ſociety*," (ſays our Author*) "are the wants and the fears of individuals. Not that we can believe, with "ſome theoretical writers, that there

* 1 Comm. p. 47.

"ever

" ever was a time when there was no
" ſuch thing as *ſociety*; and that, from
" the impulſe of reaſon, and through
" a ſenſe of their wants and weakneſ-
" ſes, individuals met together in a large
" plain, entered into an *original con-*
" *tract*, and choſe the talleſt man pre-
" ſent to be their governor. This no-
" tion, of an actually exiſting uncon-
" nected *ſtate of nature*, is too wild to
" be ſeriouſly admitted; and beſides, it
" is plainly contradictory to the reveal-
" ed accounts of the primitive origin
" of mankind, and their preſervation
" two thouſand years afterwards; both
" which were effected by the means of
" ſingle families. Theſe formed the firſt
" *ſociety*, among themſelves; which every
" day extended its limits, and when it
" grew too large to ſubſiſt with conve-
" nience in that paſtoral ſtate, wherein
" the Patriarchs appear to have lived, it
" neceſſarily ſubdivided itſelf by va-
" rious migrations into more. After-
" wards, as agriculture increaſed, which
" employs

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" employs and can maintain a much
" greater number of hands, migrations
" became leſs frequent; and various
" tribes, which had formerly ſeparated,
" re-united again; ſometimes by com-
" pulſion and conqueſt, ſometimes by ac-
" cident, and ſometimes perhaps by com-
" pact. But though *Society* had not its
" formal beginning from any convention
" of individuals, actuated by their wants
" and their fears; yet it is the *ſenſe* of
" their weakneſs and imperfection that
" *keeps* mankind together; that demon-
" ſtrates the neceſſity of this union; and
" that therefore is the ſolid and natural
" foundation, as well as the cement, of
" *ſociety*: And this is what we mean by
" the *original contract* of *ſociety*; which,
" though perhaps in no inſtance it has
" ever been formally expreſſed at the
" firſt inſtitution of a ſtate, yet in nature
" and reaſon muſt always be underſtood
" and implied, in the very act of aſſo-
" ciating together: namely, that the
" whole ſhould protect all its parts, and
" that

" that every part ſhould pay obedi-
" ence to the will of the whole; or, in
" other words, that the community
" ſhould guard the rights of each indi-
" vidual member, and that (in return for
" this protection) each individual ſhould
" ſubmit to the laws of the commu-
" nity; without which ſubmiſſion of all
" it was impoſſible that protection could
" be certainly extended to any.

" For when *ſociety* is once formed,
" *government* reſults of courſe, as neceſ-
" ſary to preſerve and to keep that *ſociety*
" in order. Unleſs ſome ſuperior were
" conſtituted, whoſe commands and de-
" ciſions all the members are bound to
" obey, they would ſtill remain as in a
" *ſtate of nature*, without any judge upon
" earth to define their ſeveral rights, and
" redreſs their ſeveral wrongs."—Thus far our Author.

III.

III. Confuſion among the leading terms of it.

When leading terms are made to chop and change their ſeveral ſignifications; ſometimes meaning one thing, ſometimes another,

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another, at the upſhot perhaps nothing; and this in the compaſs of a paragraph; one may judge what will be the complection of the whole context. This, we ſhall ſee, is the caſe with the chief of thoſe we have been reading: for inſtance, with the words "Society,"—"State of "nature,"—"original contract,"—not to tire the reader with any more. "*Society*," in one place means the ſame thing as "*a ſtate of nature*" does: in another place it means the ſame as "*Government*." Here, we are required to believe there *never was* ſuch a ſtate as a ſtate of nature: there, we are given to underſtand there *has been*. In like manner with reſpect to an *original contract* we are given to underſtand that ſuch a thing never exiſted; that the notion of it is ridiculous: at the ſame time that there is no ſpeaking nor ſtirring without ſuppoſing that there was one.

IV.

"Society" put ſynonymous to a

IV.

1*ſt*. Society means a *ſtate of nature*. For if by "*a ſtate of nature*" a man

meai s

means any thing, it is the ſtate, I take it, men are in or ſuppoſed to be in, before they are under *government*: the ſtate men quit when they enter into a ſtate of government; and in which were it not for government they would remain. But by the word "*ſociety*" it is plain at one time that he means that ſtate. Firſt, according to him, comes *ſociety*; then afterwards comes *government*. "For when "ſociety," ſays our Author, "is once "formed, government reſults of courſe; "as neceſſary to preſerve and keep that "ſociety in order*."—And again, immediately afterwards,—"A ſtate in which "a ſuperior has been conſtituted, whoſe "commands and deciſions all the mem-"bers are bound to obey," he puts as an explanation (nor is it an inapt one) of a ſtate of "*government:*" and "unleſs" men were in a ſtate of that deſcription, they would ſtill "remain" he ſays, "as in "a *ſtate of nature.*" By *ſociety*, therefore, he means, once more, the ſame as by a "*ſtate of nature:*" he *oppoſes* it to

ſtate of nature.—oppoſed to "Govern-"ment."—and ſpoken of as having exiſted.

* v. ſupra p. 11.

government.

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government. And he ſpeaks of it as a ſtate which, in this ſenſe, has actually exiſted.

V.

"Society"—put ſynonymous to "government."

V.

2*dly*, This is what he tells us in the beginning of the *ſecond* of the two paragraphs: but all the time the *firſt* paragraph laſted, *ſociety* meant the ſame as *government*. In ſhifting then from one paragraph to another, it has changed its nature. 'Tis "the foundations of *ſociety* *," that he firſt began to ſpeak of; and immediately he goes on to explain to us, after his manner of explaining, the foundations of *government*. 'Tis a "formal beginning" of "Society †," that he ſpeaks ſoon after; and by this formal beginning, he tells us immediately, that he means, "the *original contract* of *ſociety* ‡," which contract entered into, "a *ſtate* §," he gives us to underſtand, is thereby "inſtituted," and men have

* 1. Comm. p. 47. ſupra p. 8.
† 1. Comm. p. 47. ſupra p. 10.
‡ 1. Comm. p. 47. ſupra p. 10.
§ 1. Comm. p. 47. ſupra p. 11.

undertaken

undertaken to "ſubmit to Laws*." So long then as this firſt paragraph laſts, "*ſociety*," I think, it is plain cannot but have been meaning the ſame as "*government*."

VI.

A ſtate of nature ſpoken of, as never having exiſted.

3*dly*, All this while too, this ſame "*ſtate of nature*" to which we have ſeen "*Society*" (a ſtate ſpoken of as exiſting) put ſynonymous, and in which were it not for *government*, men, he informs us, in the next page, would "*remain* †," is a ſtate in which they never *were*. So he expreſſly tells us. This "notion," ſays he, "of an actually exiſting unconnected "ſtate of nature;" (that is, as he explains himſelf afterwards ‡ "a ſtate in "which men have no judge to define "their rights, and redreſs their wrongs,) "is too wild to be ſeriouſly admitted ‖." When he admits it then himſelf, as he does in his next page, we are to underſtand, it ſeems, that he is bantering us: and that the next paragraph is (what one

* 1. Comm. p. 48. ſupra p. 11.
† 1. Comm. p. 48. ſupra p. 11.
‡ 1. Comm. p. 48. ſupra p. 11.
‖ 1. Comm. p. 47. ſupra p. 9.

ſhould

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ſhould not otherwiſe have taken it for) a piece of pleaſantry.

VII.

VII. *Original contract*, it's reality denied—

4*thly*, The *original contract* is a thing, we are to underſtand, that never had exiſtence; perhaps not in *any* ſtate: certainly therefore not in *all*. "Perhaps, "in no inſtance," ſays our Author, "has "it ever been formally expreſſed at the "firſt inſtitution of a ſtate *."

VIII.

VIII. —aſſerted.

5*thly*, Notwithſtanding all this, we muſt ſuppoſe, it ſeems, that it had in *every* ſtate: "yet in nature and reaſon," (ſays our Author) "it muſt always be "underſtood and implied †." Growing bolder in the compaſs of four or five pages, where he is ſpeaking of our own Government, he aſſerts roundly ‡, that ſuch a Contract was actually made at the firſt formation of it. "The legiſlature "would be changed," he ſays, "from "that which *was originally* ſet up by

* 1. Comm. p. 46. ſupra p. 10.
† 1. Comm. p. 46. ſupra p. 10.
‡ 1. Comm. p. 52.

the "general consent and fundamental "act of the society."

IX.

IX. Attempt to reconcile these contradictions—Society distinguished into natural and political.

Let us try whether it be not possible for something to be done towards drawing the import of these terms out of the mist in which our Author has involved them. The word "SOCIETY," I think, it appears, is used by him, and that without notice, in two senses that are opposite. In the one, SOCIETY, or a STATE of SOCIETY, is put *synonymous* to a STATE of NATURE; and stands *opposed* to GOVERNMENT, or a STATE OF GOVERNMENT: in this sense it may be stiled, as it commonly is, *natural* SOCIETY. In the other, it is put *synonymous* to GOVERNMENT, or a STATE OF GOVERNMENT; and stands *opposed* to a STATE OF NATURE: in this sense it may be stiled, as it commonly is, *political* SOCIETY. Of the difference between these two states, a tolerably distinct idea, I take it, may be given in a word or two.

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X.

The idea of a natural ſociety is a *negative* one. The idea of a political ſociety is a *poſitive* one. 'Tis with the latter, therefore, we ſhould begin.

X. Idea of *political* ſociety.

When a number of perſons (whom we may ſtile *ſubjects*) are ſuppoſed to be in the *habit* of paying *obedience* to a perſon, or an aſſemblage of perſons, of a known and certain deſcription (whom we may call *governor* or *governors*) ſuch perſons altogether (*ſubjects* and *governors*) are ſaid to be in a ſtate of *political* SOCIETY *.

XI.

The idea of a ſtate of *natural* SOCIETY is, as we have ſaid, a *negative* one. When a number of perſons are ſuppoſed to be in the habit of *converſing* with each other, at the ſame time that they are not in any ſuch habit as mentioned above, they are ſaid to be in a ſtate of *natural* SOCIETY.

XI. Idea of *natural* ſociety.

* V. infra. par. 12. note [*b*].

XII. If

XII.

XII. Difficulty of drawing the line between the two ſtates.

If we reflect a little, we ſhall perceive, that, between theſe two ſtates, there is not that explicit ſeparation which theſe names, and theſe definitions, might teach one, at firſt ſight, to expect. It is with them as with light and darkneſs: however diſtinct the ideas may be, that are, at firſt mention, ſuggeſted by thoſe *names*, the *things* themſelves have no determinate bound to ſeparate them. The circumſtance that has been ſpoken of as conſtituting the difference between theſe two ſtates, is the preſence or abſence of an *habit of obedience*. This habit, accordingly, has been ſpoken of ſimply as *preſent* (that is as being *perfectly* preſent) or, in other words, we have ſpoken as if there were a *perfect* habit of obedience, in the *one* caſe: it has been ſpoken of ſimply as *abſent* (that is as being *perfectly* abſent) or, in other words, we have ſpoken as if there were *no* habit of obedience at all, in the *other*. But neither of theſe manners of ſpeaking, perhaps, is ſtrictly juſt. Few,

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in fact, if any, are the inſtances of this habit being perfectly *abſent*; certainly none at all, of its being perfectly *preſent*. Governments accordingly, in proportion as the habit of obedience is more perfect, recede from, in proportion as it is leſs perfect, approach to, a ſtate of nature: and inſtances may preſent themſelves in which it ſhall be difficult to ſay whether a habit, perfect, in the degree in which, to conſtitute a government, it is deemed neceſſary it *ſhould* be perfect, *does* ſubſiſt or *not*. [*b*]

XIII. On

1. A habit.

2. A habit of obedience.

3. An act of obedience.

4. An act of political obedience.

5. An expreſſion of will.

6. A *parole* expreſſion of will.

7. A *tacit* expreſſion of will.

[*b*] 1. A *habit* is but an aſſemblage of *acts*: under which name I would alſo include, for the preſent, *voluntary forbearances*.

2. A *habit of obedience* then is an aſſemblage of *acts of obedience*.

3. An *act of obedience* is any act done in purſuance of an *expreſſion of will* on the part of ſome *ſuperior*.

4. *An act of* POLITICAL *obedience* (which is what is here meant) is any act done in purſuance of an expreſſion of will on the part of a perſon governing.

5. An *expreſſion of will* is either *parole* or *tacit*.

6. A *parole expreſſion of will* is that which is conveyed by the *ſigns* called *words*.

7. A *tacit expreſſion of will* is that which is conveyed by any other *ſigns* whatſoever: among which none are

ſo

XIII.

XIII. A perfect ſtate of nature not more chimerical than a perfect ſtate of government.

On theſe conſiderations, the ſuppoſition of a *perfect ſtate of nature*, or, as it may be termed, a ſtate of *ſociety perfectly natural*, may, perhaps, be juſtly pronounced, what our Author for the moment ſeemed

ſo efficacious as *acts* of *puniſhment*, annexed in time paſt, to the non-performance of acts of the ſame ſort with thoſe that are the objects of the will that is in queſtion.

8. A *parole* expreſſion of the will of a ſuperior is a *command*.

8. A command.

9. When a *tacit* expreſſion of the will of a ſuperior is ſuppoſed to have been uttered, it may be ſtiled a *fictitious command*.

9. A *fictitious* command.

10. Were we at liberty to coin words after the manner of the Roman lawyers, we might ſay a *quaſi*-command.

10. Commands & *quaſi*-commands.

11. The STATUTE LAW is compoſed of *commands*. The COMMON LAW, of *quaſi*-commands.

11. Illuſtration—Statute Law, & Common Law.

12. An act which is the object of a command actual or fictitious; ſuch an act, conſidered before it is performed, is ſtiled a *duty*, or a *point of duty*.

12. Duty—point of duty.

13. Theſe definitions premiſed, we are now in a condition to give ſuch an idea, of what is meant by the *perfection* or *imperfection* of a *habit of obedience* in a ſociety as may prove tolerably preciſe.

13. Uſe of the above chain of *definitions*.

14. A *period* in the duration of the ſociety; the number of *perſons* it is compoſed of during that period; and the number of *points of duty* incumbent on each perſon being given;—the habit of obedience will be more or leſs *perfect*, in the ratio of the number of acts of *obedience* to thoſe of *diſobedience*.

14. Habit of obedience—meaſure of its perfection.

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ſeemed to think it, an extravagant ſuppoſition: but then that of a *government* in this ſenſe *perfect*; or, as it may be termed, a ſtate of ſociety *perfectly political*, a ſtate

15. Illuſtration.

15. The habit of obedience in this country appears to have been more perfect in the time of the Saxons than in that of the Britons: unqueſtionably it is more ſo now than in the time of the Saxons. It is not yet ſo perfect, as well contrived and well digeſted laws in time, it is to be hoped, may render it. But abſolutely perfect, till man ceaſes to be man, it never *can* be.

A very ingenious and inſtructive view of the progreſs of nations, from the leaſt perfect ſtates of political union to that highly perfect ſtate of it in which we live, may be found in LORD KAIMS's *Hiſtorical Law Tracts*.

16. Political union or connection.

16. For the convenience and accuracy of diſcourſe it may be of uſe, in this place, to ſettle the ſignification of a few other expreſſions relative to the ſame ſubject. Perſons who, with reſpect to each other, are in a ſtate of *political ſociety*, may be ſaid alſo to be in a ſtate of *political union* or *connection*.

17. Submiſſion—ſubjection.

17. Such of them as are *ſubjects* may, accordingly, be ſaid to be in a ſtate of *ſubmiſſion*, or of *ſubjection*, with reſpect to *governors*: ſuch as are *governors* in a ſtate of *authority* with reſpect to *ſubjects*.

18. Submiſſion & ſubjection.

18. When the ſubordination is conſidered as reſulting originally from the *will*, or (it may be more proper to ſay) the *pleaſure* of the party governed, we rather uſe the word "*ſubmiſſion*:" when from that of the party governing, the word "*ſubjection*." On this account it is, that the term can ſcarcely be uſed without apology, unleſs with a note of diſapprobation: eſpecially in this

 country,

ſtate of *perfect political union*, a ſtate of *perfect ſubmiſſion* in the *ſubject*, of *perfect authority* in the *governor*, is no leſs ſo. [*c*]

XIV. A re-

country, where the habit of conſidering the *conſent* of the perſons govern*ed* as being in ſome ſenſe or other involved in the notion of all *lawful*, that is, all *commendable* government, has gained ſo firm a ground. It is on this account, then, that the term "*ſubjection*," excluding as it does, or, at leaſt, not *in*cluding ſuch conſent, is uſed commonly in what is called a BAD ſenſe: that is, in ſuch a ſenſe as, together with the idea of the object in queſtion, conveys the *acceſſary* idea of diſapprobation. This acceſſary idea, however, annexed as it is to the *abſtract* term "ſubjection," does not extend itſelf to the *concrete* term "ſubjects"—a kind of inconſiſtency of which there are many inſtances in language.

It is not a *family union*, however perfect, that can conſtitute a *political ſociety*—why.

[*c*] It is true that every perſon muſt, for ſome time, at leaſt, after his birth, neceſſarily be in a ſtate of ſubjection with reſpect to his parents, or thoſe who ſtand in the place of parents to him; and that a perfect one, or at leaſt as near to being a perfect one, as any that we ſee. But for all this, the ſort of ſociety that is conſtituted by a ſtate of ſubjection thus circumſtanced, does not come up to the idea that, I believe, is generally entertained by thoſe who ſpeak of a *political* ſociety. To conſtitute what is meant in general by that phraſe, a greater *number* of members is required, or, at leaſt, a *duration* capable of a longer continuance. Indeed, for this purpoſe nothing leſs, I take it, than an *indefinite* duration is required. A ſociety, to come within the notion of what is ordinarily meant by a *political* one, muſt

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XIV.

XIV. "State of "nature" a relative expreſſion.

A remark there is, which, for the more thoroughly clearing up of our notions on this ſubject, it may be proper here to make. To ſome ears, the phraſes, "ſtate "of nature," "ſtate of political ſociety,"

be ſuch as, in its nature, is not incapable of continuing for ever in virtue of the principles which gave it birth. This, it is plain, is not the caſe with ſuch a family ſociety, of which a parent, or a pair of parents are at the head. In ſuch a ſociety, the only principle of union which is certain and uniform in its operation, is the natural weakneſs of thoſe of its members that are in a ſtate of ſubjection; that is, the children: a principle which has but a ſhort and limited continuance. I queſtion whether it be the caſe even with a family ſociety, ſubſiſting in virtue of *collateral* conſanguinity; and that for the like reaſon. Not but that even in this caſe a habit of obedience, as perfect as any we ſee examples of, may ſubſiſt for a time; to wit, in virtue of the ſame *moral* principles which may protract a habit of *filial* obedience beyond the continuance of the *phyſical* ones which gave birth to it: I mean affection, gratitude, awe, the force of habit, and the like. But it is not long, even in this caſe, before the bond of connection muſt either become imperceptible, or loſe its influence by being too extended.

Theſe conſiderations, therefore, it will be proper to bear in mind in applying the definition of political ſociety above given [in par. 10.] and in order to reconcile it with what is ſaid further on [in par. 17.]

may

may carry the appearance of being *abſolute* in their ſignification: as if the condition of a man, or a company of men, in one of theſe ſtates, or in the other, were a matter that depended altogether upon themſelves. But this is not the caſe. To the expreſſion "ſtate of nature," no more than to the expreſſion "ſtate of political ſociety," can any preciſe meaning be annexed, without reference to a party different from that one who is ſpoken of as being in the ſtate in queſtion. This will readily be perceived. The difference between the two ſtates lies, as we have obſerved, in the *habit of obedience*. With reſpect then to a habit of obedience, it can neither be underſtood as ſubſiſting in any perſon, nor as not ſubſiſting, but with reference to ſome other perſon. For one party to *obey*, there muſt be another party that is obey*ed*. But this party who is obeyed, may at different times be different. Hence may one and the ſame party be conceived to obey and *not* to obey at the ſame time,

ſo

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ſo as it be with reſpect to differeht *perſons*, or, as we may ſay, to different *objects of obedience*. Hence it is, then, that one and the ſame party may be ſaid to *be* in a ſtate of nature and *not* to be in a ſtate of nature, and that at one and the ſame time, according as it is this or *that* party that is taken for the other object of compariſon. The caſe is, that in common ſpeech, when no particular object of compariſon is ſpecified, all perſons in general are intended: ſo that when a number of perſons are ſaid ſimply to be in a ſtate of nature, what is underſtood is, that they are ſo as well with reference to one another, as to all the world.

XV.

XV. Different degrees of ſubjection among governors.

In the ſame manner we may underſtand, how the ſame man, who is *governor* with reſpect to one man or ſet of men, may be *ſubject* with reſpect to another: how among governors ſome may be in a *perfect* ſtate of *nature* with reſpect to each other: as the KINGS of FRANCE and SPAIN: others, again, in a ſtate of *perfect*

perfect ſubjection, as the HOSPODARS of WALACHIA and MOLDAVIA with reſpect to the GRAND SIGNIOR: others, again, in a ſtate of manifeſt but *imperfect ſubjection*, as the GERMAN States with reſpect to the EMPEROR: others, again, in ſuch a ſtate in which it may be difficult to determine whether they are in a ſtate of *imperfect ſubjection* or in a *perfect* ſtate of *nature:* as the KING of NAPLES with reſpect to the POPE. [*d*]

XVI.

XVI. The ſame perſon alternately in a ſtate of political and natural ſociety with reſpect to different ſocieties.

In the ſame manner, alſo, it may be conceived, without entering into details, how any ſingle perſon, born, as all perſons are, into a ſtate of perfect ſubjection to his parents *, that is into a ſtate of perfect political ſociety with reſpect to his parents, may from thence paſs into a perfect ſtate of nature; and from thence

[*d*] The Kingdom of Naples is feudatory to the Papal See: and in token of fealty, the King, at his acceſſion, preſents the Holy Father with a white horſe. The Royal vaſſal ſometimes treats his Lord but cavalierly: but always ſends him his white horſe.

* V. ſupra, par. 13. note [*c*].

ſucceſſively

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ſucceſſively into any number of different ſtates of political ſociety more or leſs perfect, by paſſing into different ſocieties.

XVII.

XVII. In the ſame political ſociety the ſame perſons alternately, governors and ſubjects, with reſpect to the ſame perſons.

In the ſame manner alſo it may be conceived how, in any political ſociety, the ſame man may, with reſpect to the ſame individuals, be, at different periods, and on different occaſions, alternately, in the ſtate of governor and ſubject: to-day concurring, perhaps active, in the buſineſs of iſſuing a *general* command for the obſervance of the whole ſociety, amongſt the reſt of another man in quality of *Judge:* to-morrow, puniſhed, perhaps, by a *particular* command of that ſame Judge for not obeying the general command which he himſelf (I mean the perſon acting in character of governor) had iſſued. I need ſcarce remind the reader how happily this alternate ſtate of *authority* and *ſubmiſſion* is exemplified among ourſelves.

XVIII.

XVIII. Hints of ſe-

Here might be a place to ſtate the different

different ſhares which different perſons may have in the iſſuing of the ſame command: to explain the nature of *corporate action*: to enumerate and diſtinguiſh half a dozen or more different modes in which *ſubordination* between the ſame parties may ſubſiſt: to diſtinguiſh and explain the different ſenſes of the words, "*conſent*," "*repreſentation*," and others of connected import: *conſent*, and *repreſentation*, thoſe intereſting but perplexing words, ſources of ſo much debate: and ſources or pretexts of ſo much animoſity. But the limits of the preſent deſign will by no means admit of ſuch protracted and intricate diſcuſſions.

veral topics that muſt be paſſed by.

XIX.

XIX. The ſame ſociety, alternately, in a ſtate of nature and a ſtate of government.

In the ſame manner, alſo, it may be conceived, how the ſame ſet of men conſidered *among themſelves*, may at one time be in a ſtate of nature, at another time in a ſtate of government. For the habit of obedience, in whatever degree of perfection it be neceſſary it ſhould ſubſiſt in order to conſtitute a government, may be

conceived,

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conceived, it is plain, to ſuffer interruptions. At different junctures it may take place and ceaſe.

XX.

Inſtance—the Aborigines of America.

Inſtances of this ſtate of things appear not to be unfrequent. The ſort of ſociety that has been obſerved to ſubſiſt among the AMERICAN INDIANS may afford us one. According to the accounts we have of thoſe people, in moſt of their tribes, if not in all, the habit we are ſpeaking of appears to be taken up only in time of war. It ceaſes again in time of peace. The neceſſity of acting in concert againſt a common enemy, ſubjects a whole tribe to the orders of a common Chief. On the return of peace each warrior reſumes his priſtine independence.

XXI.

Characteriſtic of political union.

One difficulty there is that ſtill ſticks by us. It has been ſtarted indeed, but not ſolved.—This is to find a note of diſtinction,—a characteriſtic mark, whereby to diſtinguiſh a ſociety in which there *is* a habit of obedience, and that at the degree

degree of perfection which is neceſſary to conſtitute a ſtate of government, from a ſociety in which there is *not:* a mark, I mean, which ſhall have a viſible determinate commencement; inſomuch that the inſtant of its firſt appearance ſhall be diſtinguiſhable from the laſt at which it had not as yet appeared. 'Tis only by the help of ſuch a mark that we can be in a condition to determine, at any given time, whether any given ſociety is in a ſtate of government, or in a ſtate of nature. I can find no ſuch mark, I muſt confeſs, any where, unleſs it be this; the eſtabliſhment of names of office: The appearance of a certain man, or ſet of men, with a certain name, ſerving to mark them out as objects of obedience: ſuch as King, Sachem, Cacique, Senator, Burgo-maſter, and the like. This, I think, may ſerve tolerably well to diſtinguiſh a ſet of men in a ſtate of political union among *themſelves* from the *ſame* ſet of men not yet in ſuch a ſtate.

XXII.

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XXII.

XXII. Among perſons already in a ſtate of political union, at what inſtant a new ſociety can be ſaid to be formed, by defection from a former.

But ſuppoſe an inconteſtible political ſociety, and that a large one, formed; and from that a ſmaller body to break off: by this breach the ſmaller body ceaſes to be in a ſtate of political union with reſpect to the larger: and has thereby placed itſelf, with reſpect to that larger body, in a ſtate of nature—What means ſhall we find of aſcertaining the preciſe juncture at which this change took place? What ſhall be taken for the *characteriſtic mark* in this caſe? The appointment, it may be ſaid, of new governors with new names. But no ſuch appointment, ſuppoſe, takes place. The ſubordinate governors, from whom alone the people at large were in uſe to receive their commands under the old government, are the ſame from whom they receive them under the new one. The habit of obedience which theſe ſubordinate governors were in with reſpect to that ſingle perſon, we will ſay, who was the ſupreme governor of the whole, is broken off inſenſibly and by degrees.

grees. The old names by which theſe ſubordinate governors were characterized, while they were ſubordinate, are continued now they are ſupreme. In this caſe it ſeems rather difficult to anſwer.

XXIII.

XXIII. 1ſt, in caſe of defection by whole bodies—inſtance the Dutch provinces.

If an example be required, we may take that of the DUTCH provinces with reſpect to SPAIN. Theſe provinces were once branches of the Spaniſh monarchy. They have now, for a long time, been univerſally ſpoken of as independent ſtates: independent as well of that of Spain as of every other. They are now in a ſtate of nature with reſpect to Spain. They were once in a ſtate of political union with reſpect to Spain: namely, in a ſtate of ſubjection to a ſingle *governor*, a King, who was King of Spain. At what preciſe juncture did the diſſolution of this political union take place? At what preciſe time did theſe provinces ceaſe to be ſubject to the King of Spain? This,

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I doubt, will be rather difficult to agree upon [*e*].

XXIV. 2dly, in caſe of defection by individuals—inſtances, Rome—Venice.

XXIV.

Suppoſe the defection to have begun, not by entire provinces, as in the inſtance juſt mentioned, but by a handful of fugitives, this augmented by the acceſſion of other fugitives, and ſo, by degrees, to a body of men too ſtrong to be reduced, the difficulty will be encreaſed ſtill farther. At what preciſe juncture was it that ancient ROME, or that modern VENICE, became an independent ſtate?

XXV. A *revolt*, at what juncture it can be ſaid to have taken place.

XXV.

In general then, At what preciſe juncture is it, that perſons ſubject to a government, become, by diſobedience, with reſpect to that government, in a ſtate of nature? When is it, in ſhort, that a *revolt* ſhall be deemed to have taken place; and

[*e*] Upon recollection, I have ſome doubt whether this example would be found hiſtorically exact. If not, that of the defection of the Nabobs of Indoſtan may anſwer the purpoſe. My firſt choice fell upon the former; ſuppoſing it to be rather better known.

when, again, is it, that that revolt ſhall be deemed to ſuch a degree ſucceſsful, as to have ſettled into *independence*?

XXVI.

XXVI. *Diſobediences* what do *not* amount to a revolt.

As it is the obedience of individuals that conſtitutes a ſtate of ſubmiſſion, ſo is it their diſobedience that muſt conſtitute a ſtate of revolt. Is it then every act of diſobedience that will do as much? The affirmative, certainly, is what can never be maintained: for then would there be no ſuch thing as government to be found any where. Here then a diſtinction or two obviouſly preſents itſelf. Diſobedience may be diſtinguiſhed into *conſcious*, or *unconſcious*: and that, with reſpect as well to the *law* as to the *fact* [*f*]. Diſobedience that is unconſcious with reſpect to either, will readily, I ſuppoſe, be acknowledged not to be a revolt. Diſobe-

[*f*] 1. Diſobedience may be ſaid to be *unconſcious with reſpect to the fact*, when the party is ignorant either of his having done the act itſelf, which is forbidden by the law, or elſe of his having done it in thoſe *circumſtances* in which alone it is forbidden.

1. Diſobedience unconſcious with reſpect to the *fact*.

2. Diſobedience

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dience again that is conſcious with reſpect to *both*, may be diſtinguiſhed into *ſecret* and *open*; or, in other words, into *fraudulent* and *forcible*. [g] Diſobedience that is only fraudulent, will likewiſe, I ſuppoſe, be readily acknowledged not to amount to a revolt.

XXVII.

XXVII. *Diſobediences* what *do* amount to a revolt.

The difficulty that will remain will concern ſuch diſobedience only as is both *conſcious*, (and that as well with reſpect

2. Diſobedience unconſcious with reſpect to the Law.

2. Diſobedience may be ſaid to be *unconſcious*, with reſpect to the *law*; when although he may know of his having done the *act* that is in reality forbidden, and that, under the *circumſtances* in which it is forbidden, he knows not of its being forbidden, or at leaſt of its being forbidden in theſe *circumſtances*.

3. Illuſtration.

3. So long as the buſineſs of ſpreading abroad the knowledge of the law continues to lie in the neglect in which it has lain hitherto, inſtances of diſobedience *unconſcious with reſpect to the law*, can never be otherwiſe than abundant.

Diſobediences *fraudulent* and *forcible* — the difference, illuſtrated.

[g] If examples be thought neceſſary, Theft may ſerve for an example of *fraudulent* diſobedience; Robbery of *forcible*. In Theft, the *perſon* of the diſobedient party, and the *act* of diſobedience, are both endeavoured to be kept ſecret. In Robbery, the *act* of diſobedience, at leaſt, if not the *perſon* of him who diſobeys, is manifeſt and avowed.

to

to *law* as *fact*,) and *forcible*. This diſobedience, it ſhould ſeem, is to be determined neither by *numbers* altogether (that is of the perſons ſuppoſed to be diſobedient) nor by *acts*, nor by *intentions*: all three may be fit to be taken into conſideration. But having brought the difficulty to this point, at this point I muſt be content to leave it. To proceed any farther in the endeavour to ſolve it, would be to enter into a diſcuſſion of particular local juriſprudence. It would be entering upon the definition of Treaſon, as diſtinguiſhed from Murder, Robbery, Riot, and other ſuch crimes, as, in compariſon with Treaſon, are ſpoken of as being of a more private nature. Suppoſe the definition of Treaſon ſettled, and the commiſſion of an act of Treaſon is, as far as regards the perſon committing it, the characteriſtic mark we are in ſearch of.

XXVIII.

XXVIII. Unfiniſhed ſtate of the above hints.

Theſe remarks it were eaſy to extend to a much greater length. Indeed, it is what would be neceſſary, in order to give

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them a proper fullneſs; and method, and preciſion. But that could not be done without exceeding the limits of the preſent deſign. As they are, they may ſerve as hints to ſuch as ſhall be diſpoſed to give the ſubject a more exact and regular examination.

XXIX.

XXIX. Our Author's propoſition, "That government "reſults of "courſe," not true.

From what has been ſaid, however, we may judge what truth there is in our Author's obſervation, that "when ſo-"ciety" (underſtand *natural* ſociety) "is "once formed, government" (that is political ſociety) (whatever quantity or degree of Obedience is neceſſary to conſtitute political ſociety) "reſults *of courſe*; "as neceſſary to preſerve and to keep "that ſociety in order." By the words, "*of courſe*," is meant, I ſuppoſe, *conſtantly* and *immediately*: at leaſt conſtantly. According to this, political ſociety, in any ſenſe of it, ought long ago to have been eſtabliſhed all the world over. Whether this be the caſe, let any one judge from the inſtances of the Hottentots, of the Patagonians, and of ſo many other

other barbarous tribes, of which we hear from travellers and navigators.

XXX.

XXX. Ambiguity of the ſentence.

It may be, after all, we have miſunderſtood his meaning. We have been ſuppoſing him to have been meaning to aſſert a *matter of fact*, and to have written, or at leaſt begun, this ſentence in the character of an *hiſtorical obſerver*: whereas, all he meant by it, perhaps, was to ſpeak in the character of a *Cenſor*, and, on a caſe ſuppoſed, to expreſs a *ſentiment of approbation*. In ſhort, what he meant, perhaps, to perſuade us of, was not that "government" *does actually* "reſult" from natural "ſociety;" but that it were better that it *ſhould*; to wit, as being neceſſary to "preſerve and keep" men "in that ſtate of order," in which it is of advantage to them that they ſhould be. Which of the abovementioned characters he meant to ſpeak in, is a problem I muſt leave to be determined. The diſtinction, perhaps, is what never ſo much as occured to him; and indeed the ſhift-

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ing inſenſibly, and without warning, from one of thoſe characters to the other, is a failing that ſeems inveterate in our Author; and of which we ſhall probably have more inſtances than one to notice.

XXXI.

Darkneſs of the whole paragraph further ſhewn.

To conſider the whole paragraph (with its appendage) together, ſomething, it may be ſeen, our Author ſtruggles to overthrow, and ſomething to eſtabliſh. But *how* it is he would overthrow, or *what* it is he would eſtabliſh, are queſtions I muſt confeſs myſelf unable to reſolve. "The preſervation of mankind," he obſerves, "was effected by "ſingle families." This is what, upon the authority of the Holy Scriptures, he aſſumes: and from this it is that he would have us conclude the notion of an original contract (the ſame notion which he afterwards adopts) to be ridiculous. The force of this concluſion, I muſt own, I do not ſee. Mankind was preſerved by ſingle families—Be it ſo. What is there in this to hinder "individuals" of thoſe families, or of families deſcended from

from thoſe families, from meeting together "afterwards, in a large plain," or any where elſe, "entering into an "*original* contract," or any other contract, "and chooſing the talleſt man," or any other man, "preſent," or abſent, to be their Governor? The "flat contradiction" our Author finds between this ſuppoſed tranſaction and the "preſervation of mankind by ſingle families," is what I muſt own myſelf unable to diſcover. As to the "actually "exiſting unconnected ſtate of nature" he ſpeaks of, "the notion of which," he ſays, "is too wild to be ſeriouſly admitted," whether this be the caſe with it, is what, as he has given us no notion of it at all, I cannot judge of.

XXXII.

XXXII. Farther proofs of the darkneſs of the whole paragraph.

Something poſitive, however, in one place, we ſeem to have. Theſe "ſingle "families," by which the preſervation of mankind was effected; theſe ſingle families, he gives us to underſtand, "formed the firſt ſociety." This is ſomething to proceed upon. A ſociety then

of

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of the one kind or the other; a natural ſociety, or elſe a political ſociety, was formed. I would here then put a caſe, and then propoſe a queſtion. In this ſociety, we will ſay no *contract* had as yet been entered into; no *habit of obedience* as yet formed. Was this then a *natural* ſociety merely, or was it a *political* one? For my part, according to my notion of the two kinds of ſociety as above explained, I can have no difficulty. It was a merely *natural* one. But, according to our Author's notion, which was it? If it *was* already a *political* one, what notion would he give us of ſuch an one as ſhall have been a *natural* one; and by what change could ſuch precedent natural one have turned into *this* political one? If this was *not* a political one, then what ſort of a Society are we to underſtand any one to be which *is* political? By what mark are we to diſtinguiſh it from a natural one? To this, it is plain, our Author has not given any anſwer. At the ſame time, that to give an anſwer to it, was,

was, if any thing, the profeſſed purpoſe of the long paragraph before us.

XXXIII.

XXXIII. A general idea of its character.

It is time this paſſage of our Author were diſmiſſed—As among the expreſſions of it are ſome of the moſt ſtriking of thoſe which the vocabulary of the ſubject furniſhes, and theſe ranged in the moſt harmonious order, on a diſtant glance nothing can look fairer: a prettier piece of tinſel-work one ſhall ſeldom ſee exhibited from the ſhew-glaſs of political erudition. Step cloſe to it, and the deluſion vaniſhes. It is then ſeen to conſiſt partly of ſelf-evident obſervations, and partly of contradictions; partly of what every one knows already, and partly of what no one can underſtand at all.

XXXIV.

XXXIV. Difficulty attending this examination.

Throughout the whole of it, what diſtreſſes me is, not the meeting with any poſitions, ſuch as, thinking them falſe, I find a difficulty in proving ſo: but the not meeting with any poſitions, true or falſe, (unleſs it be here and there a ſelf-evident one,) that I can find a meaning

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ing for. If I can find nothing poſitive to accede to, no more can I to contradict. Of this latter kind of work, indeed, there is the leſs to do for any one elſe, our Author himſelf having executed it, as we have ſeen, ſo amply.

The whole of it is, I muſt confeſs, to me a riddle: more acute, by far, than I am, muſt be the Oedipus that can ſolve it. Happily it is not neceſſary, on account of any thing that follows, that it ſhould be ſolved. Nothing is concluded from it. For aught I can find, it has in itſelf no uſe, and none is made of it. There it is, and as well might it be any where elſe, or no where.

XXXV.

XXXV. Uſe that may be made of it.

Were it then poſſible, there would be no uſe in its being ſolved: but being, as I take it, *really* unſolvable, it were of uſe it ſhould *be ſeen* to be ſo. Peace may, by this means, be reſtored to the breaſt of many a deſponding ſtudent, who, now prepoſſeſſed with the hopes of a rich harveſt of inſtruction, makes a crime to himſelf

ſelf of his inability to reap what, in truth, his Author has not ſown.

XXXVI.

XXXVI. *Original Contract*, a fiction.

As to the Original Contract, by turns embraced and ridiculed by our Author, a few pages, perhaps, may not be ill beſtowed in endeavouring to come to a preciſe notion about its reality and uſe. The ſtreſs laid on it formerly, and ſtill, perhaps, by ſome, is ſuch as renders it an object not undeſerving of attention. I was in hopes, however, till I obſerved the notice taken of it by our Author, that this chimera had been effectually demoliſhed by Mr. HUME. [*b*] I think we hear not ſo

[*b*] 1. In the third Volume of his TREATISE *on* HUMAN NATURE.

1. Notion of the Original Contract overthrown by Mr. HUME.

Our Author, one would think, had never ſo much as opened that celebrated book: of which the criminality in the eyes of ſome, and the merits in the eyes of others, have ſince been almoſt effaced by the ſplendor of more recent productions of the ſame pen. The magnanimity of our Author ſcorned, perhaps, or his circumſpection feared, to derive inſtruction from an enemy: or, what is ſtill more probable, he knew not that the ſubject had been ſo much as touched upon by that penetrating and acute metaphyſician, whoſe works lie ſo much out of the

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ſo much of it now as formerly. The indeſtructible prerogatives of mankind have no need to be ſupported upon the ſandy foundation of a fiction.

With

the beaten track of Academic reading. But here, as it happens, there is no matter for ſuch fears. Thoſe men, who are moſt alarmed at the dangers of a free enquiry; thoſe who are moſt intimately convinced that the ſureſt way to truth is by hearing nothing but on one ſide, will, I dare anſwer almoſt, find nothing of that which they deem poiſon in this third volume. I would not wiſh to ſend the reader to any other than this, which, if I recollect aright, ſtands clear of the objections that have of late been urged, with ſo much vehemence, againſt the work in general*. As to the two firſt, the Author himſelf, I am inclined to think, is not ill-diſpoſed, at preſent, to join with thoſe who are of opinion, that they might, without any great loſs to the ſcience of Human Nature, be diſpenſed with. The like might be ſaid, perhaps, of a conſiderable part, even of this. But, after all retrenchments, there will ſtill remain enough to have laid mankind under indelible obligations. That the foundations of all *virtue* are laid in *utility*, is there demonſtrated, after a few exceptions made, with the ſtrongeſt force of evidence: but I ſee not, any more than Helvetius ſaw, what need there was for the exceptions.

2. Hiſtory of a mind perplexed by *Fiction*.

2. For my own part, I well remember, no ſooner had I read that part of the work which touches on this ſubject, than I felt as if ſcales had fallen from my eyes.

* By Dr. BEATTIE, in his *Eſſay on the Immutability of Truth*.

I then,

XXXVII.

XXXVII. Fictions *in general* miſchievous in the preſent ſtate of things.

With reſpect to this, and other fictions, there was once a time, perhaps, when they had their uſe. With inſtruments of this temper, I will not deny but that ſome political work may have been

I then, for the firſt time, learnt to call the cauſe of the People the cauſe of Virtue.

Perhaps a ſhort ſketch of the wanderings of a raw but well-intentioned mind, in its reſearches after moral truth, may, on this occaſion, be not unuſeful: for the hiſtory of one mind is the hiſtory of many. The writings of the honeſt, but prejudiced, Earl of Clarendon, to whoſe integrity nothing was wanting, and to whoſe wiſdom little, but the fortune of living ſomething later; and the contagion of a monkiſh atmoſphere; theſe, and other concurrent cauſes, had liſted my infant affections on the ſide of deſpotiſm. The Genius of the place I dwelt in, the authority of the ſtate, the voice of the Church in her ſolemn offices; all theſe taught me to call Charles a Martyr, and his opponents rebels. I ſaw innovation, where indeed innovation, but a glorious innovation, was, in their efforts to withſtand him. I ſaw falſehood, where indeed falſehood was, in their diſavowals of innovation. I ſaw ſelfiſhneſs, and an obedience to the call of paſſion, in the efforts of the oppreſſed to reſcue themſelves from oppreſſion. I ſaw ſtrong countenance lent in the ſacred writings to monarchic government: and none to any other. I ſaw *paſſive obedience* deep ſtamped with the ſeal of the Chriſtian Virtues of humility and ſelf-denial.

Converſing

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been done, and that uſeful work, which, under the then circumſtances of things, could hardly have been done with any other. But the ſeaſon of *Fiction* is now over: inſomuch, that what formerly might

Converſing with Lawyers, I found them full of the virtues of their Original Contract, as a recipe of ſovereign efficacy for reconciling the accidental neceſſity of reſiſtance with the general duty of ſubmiſſion. This drug of theirs they adminiſtered to me to calm my ſcruples. But my unpractiſed ſtomach revolted againſt their opiate. I bid them open to me that page of hiſtory in which the ſolemnization of this important contract was recorded. They ſhrunk from this challenge; nor could they, when thus preſſed, do otherwiſe than our Author has done, confeſs the whole to be a fiction. This, methought, looked ill. It ſeemed to me the acknowledgement of a bad cauſe, the bringing a fiction to ſupport it. "To prove fiction, indeed," ſaid I, "there is "need of fiction; but it is the characteriſtic of truth "to need no proof but truth. Have you then really "any ſuch privilege as that of coining facts? You "are ſpending argument to no purpoſe. Indulge your-"ſelves in the licence of ſuppoſing that to be true which "is not, and as well may you ſuppoſe that propoſition "itſelf to be true, which you wiſh to prove, as that "other whereby you hope to prove it." Thus continued I unſatisfying, and unſatisfied, till I learnt to ſee that *utility* was the teſt and meaſure of all virtue; of loyalty as much as any: and that the obligation to miniſter

to

might have been, tolerated and countenanced under that name, would, if now attempted to be ſet on foot, be cenſured and ſtigmatized under the harſher appellations of *incroachment* or *impoſture*. To attempt to introduce any *new* one, would be *now* a crime: for which reaſon there is much danger, without any uſe, in vaunting and propagating ſuch as have been introduced already. In point of political diſcernment, the univerſal ſpread of learning has raiſed mankind in a manner to a level with each other, in compariſon of what they have been in any former time: nor is any man now ſo far elevated above his fellows, as that he ſhould be indulged in the dangerous licence of cheating them for their good.

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XXXVIII.

As to the fiction now before us, in the character of an *argumentum ad hominem*,

XXXVIII. *This* had a momentary uſe.

to general happineſs, was an obligation paramount to and incluſive of every other. Having thus got the inſtruction I ſtood in need of, I ſat down to make my profit of it. I bid adieu to the original contract: and I left it to thoſe to amuſe themſelves with this rattle, who could think they needed it.

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coming when it did, and managed as it was, it ſucceeded to admiration.

That compacts, by whomſoever entered into, *ought* to be kept;—that men are *bound* by compacts, are propoſitions which men, without knowing or enquiring why, were diſpoſed univerſally to accede to. The obſervance of promiſes they had been accuſtomed to ſee pretty conſtantly enforced. They had been accuſtomed to ſee Kings, as well as others, behave themſelves as if bound by them. This propoſition, then, "that men are "bound by *compacts*;" and this other, "that, if one party performs not his part, "the other is releaſed from his," being propoſitions which no man diſputed, were propoſitions which no man had any call to prove. In theory they were aſſumed for axioms: and in practice they were obſerved as rules. [*i*] If, on any

A *compact*, or *contract*.

[*i*] A *compact* or *contract* (for the two words on this occaſion, at leaſt, are uſed in the ſame ſenſe) may, I think, be defined, a pair of promiſes, by two perſons reciprocally given, the one promiſe in conſideration of the other.

occaſion, it was thought proper to make a ſhew of proving them, it was rather for form's ſake than for any thing elſe: and that, rather in the way of memento or inſtruction to acquieſcing auditors, than in the way of proof againſt opponents. On ſuch an occaſion the common place retinue of phraſes was at hand; *Juſtice, Right Reaſon* required it, the *Law* of *Nature* commanded it, and ſo forth; all which are but ſo many ways of intimating that a man is firmly perſuaded of the truth of this or that moral propoſition, though he either thinks he *need not*, or finds he *can't*, tell *why*. Men were too obviouſly and too generally intereſted in the obſervance of theſe rules to entertain doubts concerning the force of any arguments they ſaw employed in their ſupport.—It is an old obſervation how Intereſt ſmooths the road to Faith.

XXXIX.

XXXIX. Terms of the ſuppoſed contract ſtated.

A compact, then, it was ſaid, was made by the King and People: the terms of it were to this effect. The People,

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on their part, promiſed to the King a *general obedience*. The King, on his part, promiſed to *govern* the people in ſuch a *particular* manner always, as ſhould be *ſubſervient* to their happineſs. I inſiſt not on the words: I undertake only for the ſenſe; as far as an imaginary engagement, ſo looſely and ſo variouſly worded by thoſe who have imagined it, is capable of any decided ſignification. Aſſuming then, as a general rule, that promiſes, when made, ought to be obſerved; and, as a point of fact, that a promiſe to this effect in particular had been made by the party in queſtion, men were more ready to deem themſelves qualified to judge when it was ſuch a promiſe was *broken*, than to decide directly and avowedly on the delicate queſtion, when it was that a King acted ſo far in *oppoſition* to the happineſs of his people, that it were better no longer to obey him.

XL.

XL. Stated thus generally, it could not

It is manifeſt, on a very little conſideration, that nothing was gained by this

this manœuvre after all: no difficulty removed by it. It was ſtill neceſſary, and that as much as ever, that the queſtion men ſtudied to avoid ſhould be determined, in order to determine the queſtion they thought to ſubſtitute in its room. It was ſtill neceſſary to determine, whether the King in queſtion had, or had not acted ſo far in *oppoſition* to the happineſs of his people, that it were better no longer to obey him; in order to determine, whether the promiſe he was ſuppoſed to have made, had or had not been broken. For what was the ſuppoſed purport of this promiſe? It was no other than what has juſt been mentioned.

diſpenſe men from entering into the queſtion of *utility*, as was intended.

XLI.

XLI.

Let it be ſaid, that part at leaſt of this promiſe was to govern in *ſubſervience to Law*: that hereby a more preciſe rule was laid down for his conduct, by means of this ſuppoſal of a promiſe, than that other looſe and general rule to govern in ſubſervience to the *happineſs of his people*: and that, by this means, it is the

Nor, if ſtated more particularly, could it anſwer what was deſigned by it.

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letter of the *Law* that forms the tenor of the rule.

Now true it is, that the governing in oppoſition to Law, is *one* way of governing in oppoſition to the happineſs of the people: the natural effect of ſuch a contempt of the Law being, if not actually to deſtroy, at leaſt to threaten with deſtruction, all thoſe rights and privileges that are founded on it: rights and privileges on the enjoyment of which that happineſs depends. But ſtill it is not this that can be ſafely taken for the entire purport of the promiſe here in queſtion: and that for ſeveral reaſons. *Firſt*, Becauſe the moſt miſchievous, and under certain conſtitutions the moſt feaſible, method of governing in oppoſition to the happineſs of the people, is, by ſetting the Law itſelf in oppoſition to their happineſs. *Secondly*, Becauſe it is a caſe very conceivable, that a King may, to a great degree, impair the happineſs of his people without violating the letter of any ſingle Law. *Thirdly*, Becauſe extraordinary

dinary occaſions may now and then occur, in which the happineſs of the people may be better promoted by acting, for the moment, in *oppoſition* to the Law, than in *ſubſervience* to it. *Fourthly*, Becauſe it is not any ſingle violation of the Law, as ſuch, that can properly be taken for a breach of his part of the contract, ſo as to be underſtood to have releaſed the people from the obligation of performing theirs. For, to quit the fiction, and reſume the language of plain truth, it is ſcarce ever any ſingle violation of the Law that, by being *ſubmitted to*, can produce ſo much miſchief as ſhall ſurpaſs the probable miſchief of *reſiſting* it. If every ſingle inſtance whatever of ſuch a violation were to be deemed an entire diſſolution of the contract, a man who reflects at all would ſcarce find any-where, I believe, under the ſun, that Government which he could allow to ſubſiſt for twenty years together. It is plain, therefore, that to paſs any ſound deciſion upon the queſtion which the inventors of this fiction ſubſtituted

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instead of the true one, the latter was still necessary to be decided. All they gained by their contrivance was, the convenience of deciding it obliquely, as it were, and by a side wind—that is, in a crude and hasty way, without any direct and steady examination.

XLII.

XLII. Nor is it an original independent principle.

But, after all, for what *reason* is it, that men *ought* to keep their promises? The moment any intelligible reason is given, it is this: that it is for the *advantage* of society they should keep them; and if they do not, that, as far as *punishment* will go, they should be *made* to keep them. It is for the advantage of the whole number that the promises of each individual should be kept; and, rather than they should not be kept, that such individuals as fail to keep them should be punished. If it be asked, how this appears? the answer is at hand:—Such is the benefit to gain, and mischief to avoid, by keeping them, as much more than compensates the mischief of so much

puniſhment as is requiſite to oblige men to it. Whether the dependence of *benefit* and *miſchief* (that is, of *pleaſure* and *pain*) upon men's conduct in this behalf, be as here ſtated, is a queſtion of *fact*, to be decided, in the ſame manner that all other queſtions of fact are to be decided, by teſtimony, obſervation, and experience [*k*].

XLIII.

XLIII. Nor can it ſerve to prove any thing, but what may be better proved without it.

This then, and no other, being the *reaſon* why men ſhould be made to keep their promiſes, viz. that it is for the

[*k*] The importance which the obſervance of promiſes is of to the happineſs of ſociety, is placed in a very ſtriking and ſatisfactory point of view, in a little apologue of MONTESQUIEU, intitled, *The Hiſtory of the Troglodytes* *. The Troglodytes are a people who pay no regard to promiſes. By the natural conſequences of this diſpoſition, they fall from one ſcene of miſery into another; and are at laſt exterminated. The ſame Philoſopher, in his *Spirit of Laws*, copying and refining upon the current jargon, feigns a LAW for this and other purpoſes, after defining a Law to be a *relation*. How much more inſtructive on this head is the fable of the Troglodytes than the pſeudo-metaphyſical ſophiſtry of the *Eſprit des Loix*!

* See the Collection of his Works.

advantage

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advantage of ſociety that they ſhould, is a reaſon that may as well be given at once, why *Kings*, on the one hand, in governing, ſhould in general keep within eſtabliſhed Laws, and (to ſpeak univerſally) abſtain from all ſuch meaſures as tend to the unhappineſs of their ſubjects: and, on the other hand, why *ſubjects* ſhould obey Kings as long as they ſo conduct themſelves, and no longer; why they ſhould obey in ſhort *ſo long as the probable miſchiefs of obedience are leſs than the probable miſchiefs of reſiſtance*: why, in a word, taking the whole body together, it is their *duty* to obey, juſt ſo long as it is their *intereſt*, and no longer. This being the caſe, what need of ſaying of the one, that *he* PROMISED ſo to *govern*; of the other, that they PROMISED ſo to *obey*, when the fact is otherwiſe?

XLIV.

XLIV.

The *Coronation-Oath* does not come up to the notion of it.

True it is, that, in this country, according to ancient forms, ſome ſort of vague promiſe of *good government* is made by Kings at the ceremony of their coronation:

nation: and let the acclamations, perhaps given, perhaps not given, by chance perſons out of the ſurrounding multitude, be conſtrued into a promiſe of *obedience* on the part of the *whole* multitude: that whole multitude itſelf, a ſmall drop collected together by chance out of the ocean of the ſtate: and let the two promiſes thus made be deemed to have formed a perfect *compact*:—not that either of them is declared to be the *conſideration* of the other *.

XLV.

XLV. The obligation of a promiſe will not ſtand againſt that of utility: while that of utility will againſt that of a promiſe.

Make the moſt of this conceſſion, one experiment there is, by which every reflecting man may ſatisfy himſelf, I think, beyond a doubt, that it is the conſideration of *utility*, and no other, that, ſecretly but unavoidably, has governed his judgment upon all theſe matters. The experiment is eaſy and deciſive. It is but to reverſe, in ſuppoſition, in the firſt place the import of the *particular* promiſe thus feigned; in the next place, the effect in point of *utility* of the obſervance of pro-

* V. ſupra par. 38. note. [*i*].

miſes

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miſes *in general.*—Suppoſe the King to promiſe that he would govern his ſubjects *not* according to Law; *not* in the view to promote their happineſs:—would this be binding upon *him?* Suppoſe the people to promiſe they would obey him *at all events*, let him govern as he will; let him govern to their deſtruction. Would this be binding upon *them?* Suppoſe the conſtant and univerſal effect of an obſervance of promiſes were to produce *miſchief*, would it *then* be men's *duty* to obſerve them? Would it *then* be *right* to make Laws, and apply puniſhment to *oblige* men to obſerve them?

XLVI.

A fallacy obviated.

XLVI.

"No;" (it may perhaps be replied) "but for this reaſon; among promiſes, "ſome there are that, as every one al- "lows, are void: now theſe you have "been ſuppoſing, are unqueſtionably of "the number. A promiſe that is in itſelf "*void*, cannot, it is true, create any ob- "ligation: But allow the promiſe to "be *valid*, and it is the promiſe itſelf

"that

" that creates the obligation, and no- " thing elſe." The fallacy of this argument it is eaſy to perceive. For what is it then that the promiſe depends on for its *validity?* what is it that being *preſent* makes it *valid?* what is it that being *wanting* makes it *void?* To acknowledge that any *one* promiſe may be void, is to acknowledge that if any *other* is *binding*, it is not merely becauſe it is a promiſe. That circumſtance then, whatever it be, on which the validity of a promiſe depends, that circumſtance, I ſay, and not the promiſe itſelf muſt, it is plain, be the cauſe of the obligation which a promiſe is apt in general to carry with it.

XLVII.

XLVII. The obligation of a promiſe, were it even *independent*, would not be *extenſive* enough for the purpoſe.

But farther. Allow, for argument's ſake, what we have diſproved: allow that the obligation of a promiſe is independent of every other: allow that a promiſe is binding *propriâ vi*—Binding then on whom? On him certainly who makes it. Admit this: For what reaſon is the ſame individual

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individual promiſe to be binding on thoſe who *never* made it? The King, *fifty years ago*, promiſed my *Great-Grandfather* to govern him according to Law: my Great-Grandfather, *fifty years ago*, promiſed the King to obey him according to Law. The King, *juſt now*, promiſed my *neighbour* to govern him according to Law: my neighbour, *juſt now*, promiſed the King to obey him according to Law. —Be it ſo—What are theſe promiſes, all or any of them, to *me*? To make anſwer to this queſtion, ſome other principle, it is manifeſt, muſt be reſorted to, than that of the *intrinſic* obligation of promiſes upon thoſe who make them.

XLVIII.

But the principle of UTILITY is all-ſufficient.

XLVIII.

Now this *other* principle that ſtill recurs upon us, what other can it be than the *principle of* UTILITY? The principle which furniſhes us with that *reaſon*, which alone depends not upon any higher reaſon, but which is itſelf the ſole and all-ſufficient reaſon for every point of practice whatſoever.

CHAP.

CHAP. II.

FORMS *of* GOVERNMENT.

I.

CHAP. II.

I. Subject of the preſent chapter.

THE contents of the whole digreſſion we are examining, were diſtributed, we may remember, at the outſet of this eſſay, into five diviſions. The firſt, relative to the manner in which Government in general was formed, has already been examined in the preceding chapter. The next, relative to the different *ſpecies* or *forms* it may aſſume, comes now to be conſidered.

II.

II. Theological flouriſh of our Author.

The firſt object that ſtrikes us in this diviſion of our ſubject is the theological flouriſh it ſets out with. In God may be ſaid, though in a peculiar ſenſe, to be our Author's ſtrength. In theology he has found a not unfrequent ſource, of ornament to divert us, of authority to overawe

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awe us, from ſounding into the ſhallowneſs of his doctrines [*a*].

III.

Governors—celeſtial endowments found for them.

III.

That governors, of ſome ſort or other, we muſt have, is what he has been ſhewing in the manner we have ſeen in the laſt chapter. Now for *endowments* to qualify them for the exerciſe of their function. Theſe endowments then, as if it were to make them ſhew the brighter, and to keep them, as much as poſſible, from being ſoiled by the rough hands of impertinent ſpeculators, he has choſen ſhould be of æthereal texture, and has fetched them from the clouds.

"All mankind *," he ſays, "will "agree that government ſhould be re- "poſed in ſuch perſons in whom thoſe "qualities are moſt likely to be found, "the perfection of which are among the "attributes of Him who is emphatically

[*a*] This is what there would be occaſion to ſhew at large, were what he ſays of LAW in *general*, and of the LAWS of *Nature* and *Revelation* in particular, to be examined.

* R Comm. p. 48.

"ſtyled

" ſtyled the Supreme Being: the three " great requiſites, I mean, of wiſdom, of " goodneſs, and of power."

But let us ſee the whole paſſage as it ſtands—

IV.

IV. The paſſage recited.

" But as all the members of Society," (meaning *natural* Society) " are naturally " EQUAL," (*i. e.* I ſuppoſe, with reſpect to *political* power, of which none of them as yet have any) " it may be aſked," (continues he) " in whoſe hands are the reins " of government to be intruſted? To " this the general anſwer is eaſy; but the " application of it to particular caſes, " has occaſioned one half of thoſe miſ- " chiefs which are apt to proceed from " miſguided political zeal. In general, " all mankind will agree that govern- " ment ſhould be repoſed in ſuch perſons " in whom thoſe qualities are moſt likely " to be found; the perfection of which " are among the attributes of Him who is " emphatically ſtyled the Supreme Being; " the three grand requiſites, I mean, of

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" wiſdom, goodneſs, and of power: wiſ-
" dom, to diſcern the real intereſt of the
" community; goodneſs, to endeavour
" always to purſue that real intereſt;
" and ſtrength or power, to carry this
" knowledge and intention into action.
" Theſe are the natural foundations of
" ſovereignty, and theſe are the requi-
" ſites that ought to be found in every
" well conſtituted frame of govern-
" ment."

V.

Theology on ſuch an occaſion as this impertinent.

Every thing in its place. Theology in a ſermon, or a catechiſm. But in this place, the flouriſh we have ſeen, might, for every purpoſe of inſtruction, have much better, it ſhould ſeem, been ſpared. What purpoſe the idea of that tremendous and incomprehenſible Being thus unneceſſarily introduced can anſwer, I cannot ſee, unleſs it were to bewilder and entrance the reader; as it ſeems to have bewildered and entranced the writer. Beginning thus, is beginning at the wrong end: it is explaining *ignotum per ignotius*.

It

It is not from the attributes of the Deity, that an idea is to be had of any qualities in men: on the contrary, it is from what we see of the qualities of men, that we obtain the feeble idea we can frame to ourselves, of the attributes of the Deity.

VI.

VI. Difficulty it leads him into.

We shall soon see whether it be light or darkness our Author has brought back from this excursion to the clouds. The qualifications he has pitched upon for those in whose hands Government is to be reposed, we see are *three*: wisdom, goodness, and power. Now of these three, one there is which, I doubt, will give him some trouble to know what to do with. I mean, that of *Power*: which, looking upon it as a jewel, it should seem, that would give a lustre to the royal diadem, he was for importing from the celestial regions. In heaven, indeed, we shall not dispute its being to be found; and that at all junctures alike. But the parallel, I doubt, already fails.

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In the earthly governors in queſtion, or, to ſpeak more properly, candidates for government, by the very ſuppoſition there can not, at the juncture he ſuppoſes, be any ſuch thing. *Power* is that very quality which, in conſideration of theſe other qualities, which, it is ſuppoſed, are poſſeſſed by them already, they are now waiting to receive.

VII.

VII. Power, either natural or political.

By Power in this place, I, for my part, mean *political* power: the only ſort of power our Author could mean: the only ſort of power that is here in queſtion. A little farther on we ſhall find him ſpeaking of this endowment as being poſſeſſed, and that in the higheſt degree, by a King, a ſingle perſon. *Natural* power therefore, mere organical power, the faculty of giving the hardeſt blows, can never, it is plain, be that which he meant to number among the attributes of this godlike perſonage.

VIII.

VIII. In neither

We ſee then the dilemma our Author's theology

theology has brought him into, by putting him upon reckoning *power* among the qualifications of his candidates. Power is either *natural* or *political*. *Political* power is what they cannot have by the ſuppoſition: for that is the very thing that is to be created, and which, by the eſtabliſhment of Government, men are going to confer on them. If any then, it muſt be *natural* power; the natural ſtrength that a man poſſeſſes of himſelf without the help of Government. But of this then, if this be it, there is more, if we may believe our Author, in a ſingle member of a ſociety, than in that member and all the reſt of the ſociety put together. [*d*]

ſenſe can it be attributed as he attributes it.

IX.

IX. What it is that may.

This difficulty, if poſſible, one ſhould be glad to ſee cleared up. The truth is, I take it, that in what our Author has

[*d*] V. infra, par. 32. Monarchy, which is the government of *one*, "is the moſt powerful form of government," he ſays, "of any:" more ſo than Democracy, which he deſcribes as being the Government of *all*.

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ſaid of power, he has been ſpeaking, as it were, by anticipation: and that what he means by it, is not any power of either kind actually poſſeſſed by any man, or body of men, at the juncture he ſuppoſes, but only a *capacity*, if one may call it ſo, of *retaining* and *putting* into action political power, whenſoever it ſhall have been conferred. Now, of actual power, the quantity that is poſſeſſed is, in every caſe, one and the ſame: for it is neither more nor leſs than the ſupreme power. But as to the capacity above ſpoken of, there do ſeem, indeed, to be good grounds for ſuppoſing it to ſubſiſt in a higher degree in a *ſingle* man than in a *body*.

X.

X. —and for what reaſon.

Theſe grounds it will not be expected that I ſhould diſplay at large: a ſlight ſketch will be ſufficient.—The efficacy of power is, in part at leaſt, in proportion to the promptitude of obedience: the promptitude of obedience is, in part, in proportion to the promptitude of command:—command is an expreſſion of will: a will

is

is ſooner formed by one than many. And this, or ſomething like it, I take to be the plain Engliſh of our Author's metaphor, where he tells us*, as we ſhall ſee a little farther on†, that "a monarchy is the "moſt powerful" [form of government] "of any, all the ſinews of government "being knit together, and united in the "hands of the prince."

XI.

XI. Heterogeneous contents of the next paragraph.

The next paragraph, ſhort as it is, contains variety of matter. The firſt two ſentences of it are to let us know, that with regard to the manner in which each of the *particular* governments that we know of have been formed, he thinks proper to paſs it by. A third is to intimate, for the ſecond time, that all Governments muſt be abſolute in ſome hands or other: In the fourth and laſt, he favours us with a very comfortable piece of intelligence; the truth of which, but for his averment, few of us perhaps would have

* Comm. p. 50. † Par. 32.

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ſuſpected. This is, that the qualifications mentioned by the laſt paragraph as *requiſite* to be poſſeſſed by all Governors of ſtates are, or at leaſt once upon a time were, *actually* poſſeſſed by them: (i. e.) according to the opinion of ſomebody; but of what ſomebody is not altogether clear: whether in the opinion of theſe Governors themſelves, or of the perſons governed by them.

XII.

XII. The paragraph recited.

"How the ſeveral forms of Govern-
"ment we now ſee in the world at firſt
"actually began," ſays our Author, "is
"matter of great uncertainty, and has
"occaſioned infinite diſputes. It is not
"my buſineſs or intention to enter into
"any of them. However they began,
"or by what right ſoever they ſubſiſt,
"there is and muſt be in all of them a
"ſupreme, irreſiſtable, abſolute, uncon-
"trolled authority, in which the *jura*
"*ſummi imperii*, or the rights of ſove-
"reignty reſide. And this authority is
"placed in thoſe hands, wherein (ac-
"cording

" cording to the OPINION of the FOUN- CHAP.
" DERS of such respective states, either II.
" expressly given or collected from
" their *tacit* APPROBATION) the qua-
" lities requisite for supremacy, wisdom,
" goodness, and power, are the most like-
" ly to be found."

XIII.

XIII. Paradoxical assertion in the latter part of it, as if all governments were the result of a free preference.

Who those persons are whom our Author means here by the word *founders*; whether those who became the Governors of the states in question, or those who became the governed, or both together, is what I would not take upon me positively to determine. For aught I know he may have meant neither the one nor the other, but some third person. And, indeed, what I am vehemently inclined to suspect is, that, in our Author's large conception, the mighty and extensive domains of ATHENS and SPARTA, of which we read so much at school and at college, consisting each of several score of miles square, represented, at the time this paragraph was writing, the whole universe;

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univerſe: and the reſpective æras of *Solon* and *Lycurgus*, the whole period of the hiſtory of thoſe ſtates.

XIV.

XIV. Reaſons for ſuppoſing this to have been the meaning of it.

The words "founders,"—"opinion,"—"approbation,"—in ſhort, the whole complection of the ſentence is ſuch as brings to one's view a ſyſtem of government utterly different from the generality of thoſe we have before our eyes: a ſyſtem in which one would think neither caprice, nor violence, nor accident, nor prejudice, nor paſſion, had any ſhare: a ſyſtem uniform, comprehenſive, and ſimultaneous; planned with phlegmatic deliberation; eſtabliſhed by full and general aſſent: ſuch, in ſhort, as, according to common imagination, were the ſyſtems laid down by the two ſages abovementioned. If this be the caſe, the object he had in mind when he ſaid *Founders*, might be neither Governors nor governed, but ſome *neutral* perſon: ſuch as thoſe ſages, choſen as they were in a manner as umpires, might be conſidered with regard

gard to the perſons who, under the prior conſtitution, whatever it was, had ſtood reſpectively in thoſe two relations.

XV.

XV. The doctrine of it applied to particular inſtances.

All this, however, is but conjecture: in the propoſition itſelf neither this, nor any other reſtriction is expreſſed. It is delivered explicitly and emphatically in the character of an univerſal one. "In ALL OF "THEM," he aſſures us, "this authori- "ty," (the ſupreme authority) "*is* plac- "ed in thoſe hands, wherein, according "to the *opinion* of the *founders* of ſuch "reſpective ſtates," theſe "qualities of "wiſdom, goodneſs, and power, are the "moſt likely to be found." In this character it cannot but throw a ſingular light on hiſtory. I can ſee no end, indeed, to the diſcoveries it leads to, all of them equally new and edifying. When the Spaniards, for example, became maſters of the empire of Mexico, a vulgar politician might ſuppoſe it was becauſe ſuch of the Mexicans as remained unexterminated, could not help it. No ſuch thing—

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—applied to particular inſtances.

thing—It was becauſe either the Spaniards were of "opinion," or the Mexicans themſelves were of "opinion" (which of the two is not altogether clear) that, in Charles Vth, and his ſucceſſors, more goodneſs (of which they had ſuch abundant proofs) as well as wiſdom, was likely to be found, than in all the Mexicans put together. The ſame perſuaſion obtained between Charlemagne and the German Saxons with reſpect to the goodneſs and wiſdom of Charlemagne:—between William the Norman and the Engliſh Saxons:—between Mahomet IId and the ſubjects of John Paleologus:—between Odoacer and thoſe of Auguſtulus:—between the Tartar Gingiſkan and the Chineſe of his time:—between the Tartars Chang-ti and Cam-ghi, and the Chineſe of their times:—between the Protector Cromwell and the Scotch:—between William IIId and the Iriſh Papiſts:—between Cæſar and the Gauls:—in ſhort, between the Thirty Tyrants, ſo called, and the Athenians, whom our Author

ſeems to have had in view:—to mention theſe examples only, out of as many hundred as might be required. All this, if we may truſt our Author, he has the "*goodneſs*" to believe: and by ſuch leſſons is the penetration of ſtudents to be ſharpened for piercing into the depths of politics.

XVI. General contents of the ſix remaining paragraphs relating to the ſubject of this chapter.—

XVI.

So much for the introductory paragraph.—The main part of the ſubject is treated of in ſix others: the general contents of which are as follows.

XVII. —of the firſt paragraph.—

XVII.

In the firſt he tells us how many different forms of government there are according to the diviſion of the antients: which diviſion he adopts. Theſe are three: Monarchy, Ariſtocracy, and Democracy.

XVIII. —Second.—

XVIII.

The next is to tell us, that by the *ſovereign* POWER he means that of "*making* "*laws.*"

XIX. In

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XIX. —Third.—

XIX.

In a third he gives us the advantages and diſadvantages of theſe three different forms of government.

XX. —Fourth.—

XX.

In a fourth he tells us that theſe are all the antients would allow of.

XXI. —Fifth.—

XXI.

A fifth is to tell us that the Britiſh form of Government is different from each of them; being a combination of all, and poſſeſſing the advantages of all.

XXII. —Sixth.—

XXII.

In the ſixth, and laſt, he ſhews us that it could not poſſeſs theſe advantages, if, inſtead of being what it is, it were either of thoſe others: and tells us what it is that may deſtroy it. Theſe two laſt it will be ſufficient here to mention: to examine them will be the taſk of our next chapter.

XXIII. Definitions of the three ſorts of governments

XXIII.

Monarchy is that form of Government in which the power of making Laws is lodged in the hands of a *ſingle* member

member of the ſtate in queſtion. Ariſtocracy is that form of Government in which the power of making laws is lodged in the hands of *ſeveral* members. Democracy is that form of government in which the power of making laws is lodged in the hands of "*all*" of them put together. Theſe, according to our Author, are the definitions of the Antients; and theſe, therefore, without difficulty, are the definitions of our Author.

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according to our Author.

XXIV.

XXIV. The paragraph recited—

"The political writers of antiquity," ſays he, "will not allow more than three "regular forms of government; the firſt, "when the ſovereign power is lodged "in an aggregate aſſembly, conſiſting of "all the members of a community, "which is called a Democracy; the ſe-"cond, when it is lodged in a council "compoſed of ſelect members, and then "it is ſtyled an Ariſtocracy; the laſt, "when it is entruſted in the hands of a "ſingle perſon, and then it takes the "name of a Monarchy. All other ſpe-

"cies

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" cies of government they ſay are either
" corruptions of, or reducible to theſe
" three."

XXV.

XXV. and the next.

" By the ſovereign power, as was be-
" fore obſerved, is meant the making
" of laws; for wherever that power re-
" ſides, all others muſt conform to, and
" be directed by it, whatever appearance
" the outward form and adminiſtration
" of the government may put on. For
" it is at any time in the option of the
" legiſlature to alter that form and ad-
" miniſtration by a new edict or rule,
" and to put the execution of the laws
" into whatever hands it pleaſes: and all
" the other powers of the ſtate muſt
" obey the legiſlative power in the exe-
" cution of their ſeveral functions, or
" elſe the conſtitution is at an end."

XXVI.

XXVI. How he aſſigns them their reſpective qualifications.—

Having thus got three regular ſimple forms of Government (this anomalous complex one of our own out of the queſtion) and juſt as many qualifications to divide

divide among them; of each of which, by what he told us a while ago, each form of Government muſt have ſome ſhare, it is eaſy to ſee how their allotments will be made out. Each form of Government will poſſeſs one of theſe qualities in perfection, taking its chance, if one may ſay ſo, for its ſhare in the two others.

XXVII.

XXVII. All appearing equally eligible in his view of them.

Among theſe three different forms of Government then, it ſhould ſeem, according to our Author's account of them, there is not much to chooſe. Each of them has a *qualification*, an *endowment*, to itſelf. Each of them is completely characterized by this qualification. No intimation is given of any pre-eminence among theſe qualifications, one above another. Should there be any diſpute concerning the preference to be given to any of theſe forms of Government, as proper a method as any of ſettling it, to judge from this view of them, is that of croſs and pile. Hence we may infer, that all the Governments that ever were,

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or will be, (except a very particular one that we ſhall come to preſently, that is to ſay, our own) are upon a par: that of ATHENS with that of PERSIA; that of GENEVA with that of MOROCCO: ſince they are all of them, he tells us, "corruptions "of, or reducible to," one of theſe. This is happy. A legiſlator cannot do amiſs. He may ſave himſelf the expence of thinking. The choice of a King was once determined, we are told, by the neighing of a horſe. The choice of a form of Government might be determined ſo as well.

XXVIII.

XXVIII. —How to the Britiſh Conſtitution.

As to our own form of Government, however, this, it is plain, being that which it ſeemed good to take for the theme of his panegyric, and being made out of the other three, will poſſeſs the advantages of all of them put together; and that without any of the diſadvantages; the diſadvantages vaniſhing at the word of command, or even without it, as not being ſuitable to the purpoſe.

XXIX.

XXIX. Contradiction he falls

At the end of the paragraph which gives

gives us the above definitions, one obſervation there is that is a little puzzling. "Other ſpecies of government," we are given to underſtand, there are beſides theſe; but then thoſe others, if not "reducible to," are but "corruptions of "theſe." Now, what there is in any of theſe to be corrupted, is not ſo eaſy to underſtand. The eſſence of theſe ſeveral forms of government, we muſt always remember, is placed by him, ſolely and entirely, in the article of *number:* in the ratio of the number of the Governors, (for ſo for ſhortneſs we will ſtyle thoſe in whoſe hands is lodged this "power of "making laws") to that of the governed. If the number of the former be, to that of the latter, as *one* to *all*, then is the form of Government a Monarchy: if as *all* to *all*, then is it a Democracy: if as ſome number *between one and all*, to *all*, then is it an Ariſtocracy. Now then, if we can conceive a fourth number, which not being more than all, is neither one nor all, nor any thing between one and all, we can conceive a form of Government,

into, in ſuppoſing other ſorts of Government than theſe three, deſcribed as they are by him.

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ment, which, upon due proof, may appear to be a corruption of ſome one or other of theſe three [*b*]. If not, we muſt look for the corruption ſomewhere elſe: Suppoſe it were in our Author's *reaſon* [*c*].

XXX.

Governments the ſame as theſe under other names.

XXX.

Not but that we may meet, indeed, with ſeveral other hard-worded names for forms of Government: but theſe names were only ſo many names for one

[*b*] By the laws of GERMANY, ſuch and ſuch ſtates are to furniſh ſo many men to the general army of the Empire: ſome of them ſo many men and one half; others, ſo many and one third: others again, if I miſtake not, ſo many and one fourth. One of theſe half-, third-part, or quarter-men, ſuppoſe, poſſeſſes himſelf of the Government: here then we have a kind of corruption of a Monarchy. Is this what our Author had in view?

[*c*] A more ſuitable place to look for *corruption* in, if we may take his own word for it, there cannot be. "Every man's reaſon," he aſſures us *, "is "corrupt;" and not only that, but "his underſtand-"ing full of ignorance and error."—With regard to others, it were as well not to be too poſitive: but with regard to a man's ſelf, what he tells us from experience, it would be ill manners to diſpute with him.

* 1 Comm. p. 41.

or

or other of thoſe three. We hear often of a *Tyranny:* but this is neither more nor leſs than the name a man gives to our Author's Monarchy, when out of humour with it. It is ſtill the Government of number *one*. We hear now and then too, of a ſort of Government called an *Oligarchy:* but this is neither more nor leſs than the name a man gives to our Author's Ariſtocracy, in the ſame caſe. It is ſtill the Government of ſome number or other, *between one and all.* In fine, we hear now and then of a ſort of Government fit to break one's teeth, called an *Ochlocracy:* but this is neither more nor leſs than the name a man gives to a Democracy in the ſame caſe. It is ſtill that ſort of Government, which, according to our Author, is the Government of *all.*

XXXI.

XXXI. Qualifications of the three forms, how allotted —the ſubject reſumed.

Let us now ſee how he has diſpoſed of his three qualifications among his three ſorts or forms of Government. Upon Monarchy, we ſhall find, he has beſtowed the

CHAP. II.

perfection of power; on Ariſtocracy, of wiſdom; on Democracy, of goodneſs: each of theſe forms having juſt enough, we may ſuppoſe, of the two remaining qualifications beſides its own peculiar one, to make up the neceſſary complement of "qualities "requiſite for ſupremacy." Kings are, (nay *were* before they were Kings, ſince it was this qualification determined their ſubjects to make them Kings *) as ſtrong as ſo many Hercules's; but then, as to their wiſdom, or their goodneſs, there is not much to ſay. The members of an Ariſtocracy are ſo many Solomons: but then they are not ſuch ſturdy folks as your Kings; nor, if the truth is to be ſpoken, have they much more honeſty than their neighbours. As to the members of a Democracy, they are the beſt ſort of people in the world; but then they are but a puny ſort of gentry, as to ſtrength, put them all together; and apt to be a little defective in point of underſtanding.

* 1 Comm. p. 48.

"In

XXXII.

The paragraph recited.

" In a democracy," ſays he, " where " the right of making laws reſides in " the people at large, public virtue or " goodneſs of intention, is more likely " to be found, than either of the other " qualities of government. Popular " aſſemblies are frequently fooliſh in " their contrivance, and weak in their " execution; but generally mean to do " the thing that is right and juſt, and " have always a degree of patriotiſm or " public ſpirit. In ariſtocracies there is " more wiſdom to be found than in the " other frames of Government; being " compoſed, or intended to be com- " poſed, of the moſt experienced citi- " zens; but there is leſs honeſty than in " a republic, and leſs ſtrength than in a " monarchy. A monarchy is indeed the " moſt powerful of any, all the ſinews " of government being knit together " and united in the hand of the prince; " but then there is imminent danger of

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" his employing that ſtrength to improvident or oppreſſive purpoſes."

XXXIII.

—and the next.

XXXIII.

" Thus theſe three ſpecies of government have all of them their ſeveral " perfections and imperfections. Democracies are uſually the beſt calculated to direct the end of a law; ariſtocracies to invent the means by which " that end ſhall be obtained; and monarchies to carry thoſe means into execution. And the antients, as was obſerved, had in general no idea of any " other permanent form of government " but theſe three; for though Cicero declares himſelf of opinion, *eſſe optimè conſtitutam rempublicam, quæ ex tribus generibus illis, regali, optimo, et populari ſit modicè confuſa*; yet Tacitus treats " this notion of a mixed government, " formed out of them all, and partaking " of the advantages of each, as a viſionary " whim; and one, that if effected, could " never be laſting or ſecure."

In

XXXIV.

XXXIV. Democracy, as deſcribed by him, no Government at all.

In the midſt of this fine-ſpun ratiocination, an accident has happened, of which our Author ſeems not to be aware. One of his *accidents*, as a logician would ſay, has loſt its *ſubject*: one of the *qualifications* he has been telling us of, is, ſomehow or other, become vacant: the form of Government he deſigned it for, having unluckily ſlipped through his fingers in the handling. I mean Democracy; which he, and, according to him, the Antients, make out to be the Government of *all*. Now "*all*" is a great many; ſo many that, I much doubt, it will be rather a difficult matter to find theſe high and mighty perſonages power enough, ſo much as to make a decent figure with. The members of this redoubtable Commonwealth will be ſtill worſe off, I doubt, in point of ſubjects, than *Trinculo* in the play, or than the potentates, whom ſome late navigators found lording it, with might and main, "κρατερῃφι βιηφι," over a Spaniſh ſettlement: there were three members of

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Democracy, as deſcribed by him, no Government at all.

the Government; and they had one ſubject among them all*. [*e*] Let him examine it a little, and it will turn out, I take it, to be preciſely that ſort of Government, and no other, which one can conceive to obtain, where there is no Government at all. Our Author, we may remember, had ſhrewd doubts about the exiſtence of a *ſtate of nature* †: grant him his Democracy, and it exiſts in his Democracy. [*f*]

XXXV. The

* See HAWKSWORTH's *Voyages*.

[*e*] The condition of theſe imaginary ſovereigns puts one in mind of the ſtory of, I forget what King's Fool. The Fool had ſtuck himſelf up one day, with great gravity, in the King's throne; with a ſtick, by way of a ſceptre, in one hand, and a ball in the other: being aſked what he was doing? he anſwered, "*reigning*." Much the ſame ſort of reign, I take it, would be that of the members of our Author's Democracy.

† V. ſupra, ch. I. par. VI.

[*f*] What is curious is, that the ſame perſons who tell you (having read as much) that Democracy is a form of Government under which the ſupreme power is veſted in all the members of a ſtate, will alſo tell you (having alſo read as much) that the Athenian Common-wealth was a Democracy. Now the truth is, that in the Athenian Common-wealth, upon the moſt moderate computation,

XXXV.

XXXV. The qualification designed for it become vacant.

The qualification of *goodneſs*, I think it was, that belonged to the Government of *all*, while there was ſuch a Government. This having taken its flight, as we have ſeen, to the region of non-entities, the qualification that was deſigned for it remains upon his hands: he is at liberty, therefore, to make a compliment of it to Ariſtocracy or to Monarchy, which beſt ſuits him. Perhaps it were as well to give it to Monarchy; the title of that form of Government to its own peculiar qualification, *power*, being, as we have ſeen, rather an equivocal one: or elſe, which, perhaps, is as good a way of ſettling matters as any, he may ſet them to caſt lots.

computation, it is not one tenth part of the inhabitants of the Athenian ſtate that ever at a time partook of the ſupreme power: women, children, and ſlaves, being taken into the account *. Civil Lawyers, indeed, will tell you, with a grave face, that a ſlave is *nobody*; as Common Lawyers will, that a baſtard is the *ſon* of *nobody*. But, to an unprejudiced eye, the condition of a ſtate is the condition of all the individuals, without diſtinction, that compoſe it.

* See, among Mr. HUME's *Eſſays*, that *on the populouſneſs of ancient nations.*

CHAP. III.

BRITISH CONSTITUTION.

I.

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I. Our Author's panegyric on the Britiſh Conſtitution.

WITH a ſet of *data*, ſuch as we have ſeen in the laſt chapter, we may judge whether our Author can meet with any difficulty in proving the Britiſh Conſtitution to be the beſt of all poſſible governments, or indeed any thing elſe that he has a mind. In his paragraph on this ſubject there are ſeveral things that lay claim to our attention. But it is neceſſary we ſhould have it under our eye.

II.

II. The paragraph recited—

" But happily for us in this iſland " the Britiſh Conſtitution has long re- " mained, and I truſt will long continue, " a ſtanding exception to the truth of " this obſervation. For, as with us the " executive power of the laws is lodged " in a ſingle perſon, they have all the ad-

" vantages

"vantages of ſtrength and diſpatch that
" are to be found in the moſt abſolute
" monarchy; and, as the legiſlature of the
" kingdom is entruſted to three diſtinct
" powers entirely independent of each
" other; firſt, the King; ſecondly, the
" Lords Spiritual and Temporal, which
" in an ariſtocratical aſſembly of perſons
" ſelected for their piety, their birth,
" their wiſdom, their valour, or their
" property; and thirdly, the Houſe of
" Commons, freely choſen by the people
" from among themſelves, which makes
" it a kind of democracy; as this ag-
" gregate body, actuated by different
" ſprings, and attentive to different inte-
" reſts, compoſes the Britiſh Parliament,
" and has the ſupreme diſpoſal of every
" thing; there can no inconvenience be
" attempted by either of the three bran-
" ches, but will be withſtood by one of
" the other two; each branch being arm-
" ed with a negative power ſufficient to
" repel any innovation which it ſhall
" think inexpedient or dangerous."

III. " Here

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III. —And that which follows it.

III.

" Here then is lodged the ſovereignty " of the Britiſh Conſtitution; and lodged " as beneficially as is poſſible for ſociety. " For in no other ſhape could we be ſo " certain of finding the three great qua- " lities of Government ſo well and ſo " happily united. If the ſupreme pow- " er were lodged in any one of the three " branches ſeparately, we muſt be expoſ- " ed to the inconveniencies of either ab- " ſolute monarchy, ariſtocracy, or demo- " cracy; and ſo want two of the principal " ingredients of good polity, either virtue, " wiſdom, or power. If it were lodged " in any two of the branches; for in- " ſtance, in the King and Houſe of Lords, " our laws might be providently made " and well executed, but they might not " always have the good of the people in " view: if lodged in the King and Com- " mons, we ſhould want that circum- " ſpection and mediatory caution, which " the wiſdom of the Peers is to afford: " if the ſupreme rights of legiſlature were

" lodged

"lodged in the two Houſes only, and "the King had no negative upon their "proceedings, they might be tempted to "encroach upon the royal prerogative; "or perhaps to aboliſh the kingly office; "and thereby weaken (if not totally de-"ſtroy) the ſtrength of the executive "power. But the conſtitutional govern-"ment of this iſland is ſo admirably "tempered and compounded, that no-"thing can endanger or hurt it, but de-"ſtroying the equilibrium of power be-"tween one branch of the legiſlature "and the reſt. For if ever it ſhould hap-"pen that the independence of any one "of the three ſhould be loſt, or that it "ſhould become ſubſervient to the views "of either of the other two, there would "ſoon be an end of our conſtitution. "The legiſlature would be changed from "that which was originally ſet up by "the general conſent and fundamental "act of the ſociety; and ſuch a change, "however effected, is, according to Mr. "Locke (who perhaps carries his theory

"too

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" too far) at once an entire diſſolution " of the bands of Government, and the " people would be reduced to a ſtate of " anarchy, with liberty to conſtitute to " themſelves a new legiſlative power."

IV.

IV. Executive power—the mention of it—incongruouſly introduced.

In conſidering the firſt of theſe two paragraphs, in the firſt place, a phenomenon we ſhould little expect to ſee from any thing that goes before, is a certain *executive power*, that now, for the firſt time, ſtarts out upon us without warning or introduction.

The power, the only power our Author has been ſpeaking of all along till now, is the *legiſlative*. 'Tis to this, and this alone, that he has given the name of "*ſovereign* " *power*." 'Tis this power, the different diſtributions of which he makes the characteriſtics of his three different forms of government. 'Tis with theſe different diſtributions, diſtributions made of the legiſlative power, that, according to his account, are connected the ſeveral qualifications laid down by him, as " requiſites " for ſupremacy :" qualifications in the poſſeſſion

poſſeſſion of which conſiſt all the advantages which can belong to any form of Government. Coming now then to the Britiſh Conſtitution, it is in the ſuperior degree in which theſe qualifications of the legiſlative body are poſſeſſed by it, that its peculiar excellence is to conſiſt. It is by poſſeſſing the qualification of ſtrength, that it poſſeſſes the advantage of a monarchy. But how is it then that, by this account, it poſſeſſes the qualification of ſtrength? By any diſpoſition made of the legiſlative power? By the legiſlative power's being lodged in the hands of a ſingle perſon, as in the caſe of a monarchy? No; but to a diſpoſition made of a new power, which comes in, as it were, in a parentheſis, a new power which we now hear of for the firſt time, a power which has not, by any deſcription given of it, been diſtinguiſhed from the legiſlative, an *executive*.

V.

V. Difficulty of determining what it is as

What then is this ſame executive power? I doubt our Author would not

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contra-diſtinct to legiſlative.

find it a very eaſy matter to inform us. "Why not?" ſays an objector—"is it "not that power which in this country "the King has in addition to his ſhare "in the legiſlative?" Be it ſo; the difficulty for a moment is ſtaved off. But that it is far enough from being ſolved, a few queſtions will ſoon ſhew us. This power, is it that only which the King really *has*, or is it all that he is ſaid to have? Is it that only which he really has, and which he exerciſes, or is it that alſo, which although he be ſaid to have it, he neither does exerciſe, nor may exerciſe? Does it include judiciary power or not? If it does, does it include the power of making as well *particular* deciſions and orders, as *general, permanent, ſpontaneous* regulations of procedure, ſuch as are ſome of thoſe we ſee made by judges? Doth it include ſupreme military power, and that as well in ordinary as in a time of martial law? Doth it include the ſupreme *fiſcal* power;

power [*a*]; and, in general, that power which, extending as well over the public money as over every other article of public property, may be ſtyled the *diſpenſatorial* [*b*]. Doth it include the power of granting patents for inventions, and

[*a*] By *fiſcal* power I mean that which in this country is exerciſed by what is called the Board of Treaſury.

[*b*] By *diſpenſatorial* power I mean as well that which is exerciſed by the Board of Treaſury, as thoſe others which are executed in the ſeveral offices ſtyled with us the War Office, Admiralty Board, Navy Board, Board of Ordnance, and Board of Works: excepting from the buſineſs of all theſe offices, the power of appointing perſons to fill other ſubordinate offices: a power which ſeems to be of a diſtinct nature from that of making diſpoſition of any article of public property.

Power, political power, is either over *perſons* or over *things*. The powers, then, that have been mentioned above, in as far as they concern *things*, are powers over ſuch *things* as are the property of the public: powers which differ in this from thoſe which conſtitute private ownerſhip, in that the former are, in the main, not *beneficial* (that is, to the poſſeſſors themſelves) and *indiſcriminate*; but *fiduciary*, and *limited* in their exerciſe to ſuch *acts* as are conducive to the *ſpecial* purpoſes of *public* benefit and ſecurity.

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charters of incorporation? Doth it include the right of making bye-laws in corporations? And is the right of making bye-laws in corporations the ſuperior right to that of conferring the power to make them, or is it that there is an executive power that is ſuperior to a legiſlative? This *executive* again, doth it include the right of ſubſtituting the laws of war to the laws of peace; and, *vice verſâ*, the laws of peace to the laws of war? Doth it include the right of reſtraining the trade of ſubjects by treaties with foreign powers? Doth it include the right of delivering over, by virtue of the like treaties, large bodies of ſubjects to foreign laws?—He that would underſtand what power is executive and not legiſlative, and what legiſlative and not executive, he that would mark out and delineate the different ſpecies of conſtitutional powers, he that would deſcribe either what *is*, or what *ought to be* the conſtitution of a country, and particularly

lly of this country, let him *think of* CHAP. III.
theſe things.

VI.

VI. Independence inaccurately attributed to the three branches of the Government.

In the next place we are told in a parentheſis (it being a matter ſo plain as to be taken for granted) that "each of "theſe branches of the Legiſlature is "*independent*,"—yes, "*entirely* independ-"ent," of the two others.—Is this then really the caſe? Thoſe who conſider the influence which the King and ſo many of the Lords have in the election of members of the Houſe of Commons; the power which the King has, at a minute's warning, of putting an end to the exiſtence of any Houſe of Commons; thoſe who conſider the influence which the King has over both Houſes, by offices of dignity and profit given and taken away again at pleaſure; thoſe who conſider that the King, on the other hand, depends for his daily bread on both Houſes, but more particularly on the Houſe of Commons; not to mention a

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variety of other circumſtances that might be noticed in the ſame view, will judge what degree of preciſion there was in our Author's meaning, when he ſo roundly aſſerted the affirmative.

VII.

VII. A happy diſcovery—merit inſeparable from high ſtation.

One parentheſis more: for this ſentence teems with parentheſis within parentheſis. To this we are indebted for a very intereſting piece of intelligence: nothing leſs than a full and true account of the perſonal merits of the members of the Houſe of Lords for the time being. This he is enabled to do, by means of a contrivance of his own, no leſs ſimple than it is ingenious: to wit, that of looking at their titles. It is by looking at men's titles that he perceives, not merely that they *ought* to poſſeſs certain merits, not that there is reaſon to *wiſh* they may poſſeſs them, but that they do *actually* poſſeſs them, and that it is by poſſeſſing thoſe merits that they came to poſſeſs theſe titles. Seeing that ſome are biſhops, he knows that they are pious: ſeeing

ſeeing that ſome are peers, he knows that they are wiſe, rich, valiant [c]. CHAP. III.

VI. The

[c] "The Lords ſpiritual and temporal, [p. 50.] "which," ſays our Author, "*is*" an ariſtocratical "aſſembly of perſons ſelected for their piety, their "birth, their wiſdom, their valour, or their property"---

I have diſtributed, I think, theſe endowments, as our Author could not but intend they ſhould be diſtributed. Birth, to ſuch of the members of that aſſembly as have their ſeat in it by *deſcent*: and, as to thoſe who may change from time to time to ſit there by *creation*, wiſdom, valour, and property in *common* among the temporal peers; and piety, ſingly but entirely, among my Lords the Biſhops. As to the other three endowments, if there were any of them to which theſe right reverend perſons could lay any decent claim, it would be wiſdom: but ſince worldly wiſdom is what it would be an ill compliment to attribute to them, and the wiſdom which is from above is fairly included under piety, I conclude that, when ſecured in the excluſive poſſeſſion of this grand virtue, they have all that was intended them. There is a remarkable period in our hiſtory, at which, meaſuring by our Author's ſcale, theſe three virtues ſeem to have been at the boiling point. It was in Queen Ann's reign, not long after the time of the hard froſt. I mean in the year 1711. In that auſpicious year, theſe three virtues iſſued forth, it ſeems, with ſuch exuberance, as to furniſh merit enough to ſtock no fewer than a dozen reſpectable perſons,

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VIII.

VIII. Suppoſed qualities of the three pretended forms of Government not applicable to our own.

The more we conſider the application he makes of the common-place notions concerning the three forms of Government to our own, the more we ſhall ſee the wide difference there is between reading and reflecting. Our own he finds to be a combination of theſe three. It has a Monarchical branch, an Ariſto-

ſons, who, upon the ſtrength of it, were all made Barons in a day. Unhappily indeed, ſo little read was a right reverend and cotemporary hiſtorian *, in our Author's method of "diſcerning of ſpirits," as to fancy, it was neither more nor leſs than the neceſſity of making a majority that introduced ſo large a body of new members thus ſuddenly into the houſe. But I leave it to thoſe who are read in the hiſtory of that time, to judge of the ground there can be for ſo romantic an imagination. As to piety, the peculiar endowment of the mitre, the ſtock there is of that virtue, ſhould, to judge by the like ſtandard, be, at all times, pretty much upon a level: at all times, without queſtion, at a *maximum*. This is what we can make the leſs doubt of, ſince, with regard to eccleſiaſtical matters, in general, our Author, as in another place he aſſures us, has had the happineſs to find, that "every thing is as it ſhould be †."

* See Biſhop Burnet's Hiſtory of his own Times. Vol. 2.

† Vol. 4. Chap. IV. p. 49.

cratical,

cratical, and a Democratical. The Ariſtocratical is the Houſe of Lords; the Democratical is the Houſe of Commons. Much had our Author read, at ſchool, doubtleſs, and at college, of the wiſdom and gravity of the Spartan ſenate: ſomething, probably, in Monteſquieu, and elſewhere, about the Venetian. He had read of the turbulence and extravagance of the Athenian mob. Full of theſe ideas, the Houſe of Lords were to be our Spartans or Venetians; the Houſe of Commons, our Athenians. With reſpect then to the point of wiſdom, (for that of honeſty we will paſs by) the conſequence is obvious. The Houſe of Commons, however excellent in point of honeſty, is an aſſembly of leſs *wiſdom* than that of the Houſe of Lords. This is what our Author makes no ſcruple of aſſuring us. A Duke's ſon gets a ſeat in the Houſe of Commons. There needs no more to make him the very model of an Athenian cobler.

IX. Let

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IX. Wiſdom, why likely to be *wanting* in the members of a Democracy—

IX.

Let us find out, if we can, whence this notion of the want of wiſdom in the members of a Democracy, and of the abundance of it in thoſe of an Ariſtocracy, could have had its riſe. We ſhall then ſee with what degree of propriety ſuch a notion can be transferred to *our* Houſes of Lords and Commons.

In the members of a Democracy in particular, there is likely to be a want of wiſdom—Why? The greater part being poor, are, when they begin to take upon them the management of affairs, uneducated: being uneducated, they are illiterate: being illiterate, they are ignorant. Ignorant, therefore, and *unwiſe*, if that be what is meant by ignorant, they *begin*. Depending for their daily bread on the profits of ſome petty traffic, or the labour of ſome manual occupation, they are nailed to the work-board, or the counter. In the buſineſs of Government, it is only by fits and ſtarts that they have leiſure ſo much as to *act*; they

they have no leiſure to *reflect*. Ignorant therefore they *continue*.—But in what degree is this the caſe with the members of our Houſe of Commons?

X.

X.
—and *preſent* in thoſe of an Ariſtocracy.

On the other hand, the members of an Ariſtocracy, being few, are rich: either they are members of the Ariſtocracy, becauſe they are rich; or they are rich, becauſe they are members of the Ariſtocracy. Being rich, they are educated; being educated, they are learned: being learned, they are knowing. They are at leiſure to *reflect*, as well as *act*. They may therefore naturally be expected to become more knowing, that is more wiſe, as they perſevere. In what degree is this the caſe with the members of the Houſe of Lords more than with thoſe of the Houſe of Commons? The fact is, as every body ſees, that either the members of the Houſe of Commons are as much at leiſure as thoſe of the Houſe of Lords; or, if occupied, occupied in ſuch a way as tends to give them a more than ordinary inſight into ſome particular department

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ment of Government. In whom ſhall we expect to find ſo much knowledge of Law as in a profeſſed Lawyer? of Trade, as in a Merchant?

XI.

XI. Why, according to our Author,

But hold—Our Author, when he attributes to the members of an Ariſtocracy more wiſdom than to thoſe of a Democracy, has a reaſon of his own. Let us endeavour to underſtand it, and then apply it, as we have applied the others. In Ariſtocratical bodies, we are to underſtand there is more *experience*; at leaſt it is intended by ſome body or other there *ſhould be*: which, it ſeems, anſwers the ſame purpoſe as if there *was*. "In Ariſtocracies," ſays our Author, "there is more wiſdom to be found, "than in the other frames of Govern-"ment; being compoſed," continues he, "or intended to be compoſed, of the "moſt experienced citizens *." On this ground then it is, that we are to take for granted, that the members of the Houſe of Lords have more wiſdom

* P. 50.

among

among them, than thoſe of the Houſe of Commons. It is this article of *experience* that, being a qualification poſſeſſed by the members of an Ariſtocratical body, as ſuch, in a ſuperior degree to that in which it can be poſſeſſed by a democratical body, is to afford us a particular ground for attributing a greater ſhare of wiſdom to the members of the upper houſe, than to thoſe of the lower.

XII.

How it is that a member of an ariſtocracy, as ſuch, is, of all things, to have attained more *experience* than the member of a democracy, our Author has not told us; nor what it is this experience is to conſiſt of. Is it experience of things *preparatory* to, but different from, the buſineſs of governing? This ſhould rather go by the name of *knowledge*. Is it experience of the buſineſs itſelf of governing? Let us ſee. For the member of the one body, as of the other, there muſt be a time when he firſt enters upon this buſineſs. They both enter upon it,

XII. Superiority of "*experience*" how far a proof of ſuperiority of wiſdom.

CHAP. III.

ſuppoſe on the ſame day. Now then is it on that ſame day that one is more experienced in it than the other? or is it on that day ten years?

XIII.

XIII. —how far attributable to ariſtocracies in general.

Thoſe indeed who recollect what we obſerved but now *, may anſwer without heſitation,—on that day ten years. The reaſon was there given. It is neither more nor leſs, than that want of leiſure which the bulk of the numerous members of a Democracy muſt neceſſarily labour under, more than thoſe of an Ariſtocracy. But of this, what intimation is there to be collected, from any thing that has been ſuggeſted by our Author?

XIV.

XIV. —how far to our Houſe of Lords in particular.

So much with reſpect to Ariſtocracies in general. It happens alſo by accident, that that particular branch of our *own* government to which he has given the name of the Ariſtocratical,—the Houſe of Lords,—has actually greater opportunities of acquiring the qualification of experience,

* V. ſupra, par. 9.

perience, than that other branch, the House of Commons, to which he has given the name of the democratical. But to what is this owing? not to any thing in the characteristic natures of those two bodies, not to the one's being Aristocratical, and the other Democratical; but to a circumstance, entirely foreign and accidental, which we shall see presently. But let us observe his reasoning. The House of Lords, he says, is an assembly that behoves to have more wisdom in it, than the House of Commons. This is the proposition. Now for the proof. The first is an Aristocratical assembly; the second a Democratical. An Aristocratical assembly has more experience than a Democratical; and on that account more wisdom. Therefore the House of Lords, as was to be proved, has more wisdom than the House of Commons. Now, what the whole of the argument rests upon, we may observe, is this fact, that an Aristocratical assembly, as such, has more experience than a Democratical

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Democratical one; but this, with Ariſtocratical aſſemblies in general, we ſee, is not, for any reaſon that our Author has given us, the caſe. At the ſame time with reſpect to our Houſe of Lords in particular, in compariſon with the Houſe of Commons, it does happen to be the caſe, owing to this ſimple circumſtance: the members of the Houſe of Lords, when once they begin to ſit, ſit on for life: thoſe of the Houſe of Commons only from ſeven years to ſeven years, or it may happen, leſs.

XV.

What is to be underſtood by the word "*experience.*"

XV.

In ſpeaking, however, in this place, of experience, I would rather be underſtood to mean opportunity of acquiring experience, than experience itſelf. For actual experience depends upon other concurrent cauſes.

XVI.

Opportunity of experience not the ſole cauſe of wiſdom.

XVI.

It is, however, from ſuperiority of experience alone, that our Author derives ſuperiority of wiſdom. He has, indeed, the proverb in his favour: "Experience,"

it

it has been ſaid of old, "is the Mother "of Wiſdom:" be it ſo;—but then Intereſt is the Father. There is even an Intereſt that is the Father of Experience. Among the members of the Houſe of Commons, though none ſo poor as to be illiterate, are many whoſe fortunes, according to the common phraſe, are yet to make. The fortunes of thoſe of the Houſe of Lords (I ſpeak in general) are made already. The members of the Houſe of Commons may hope to be members of the Houſe of Lords. The members of the Houſe of Lords have no higher Houſe of Lords to riſe to. Is it natural for thoſe to be moſt active who have the *leaſt*, or thoſe who have the *moſt* intereſt to be ſo? Are the experienced thoſe who are the leaſt, or thoſe who are the moſt active? Does experience come to men when aſleep, or when awake? Is it the members of the Houſe of Lords that are the moſt active, or of the Houſe of Commons? To ſpeak plain, is it in the Houſe of Lords that there is moſt buſineſs

CHAP. III.

ſineſs done, or in the Houſe of Commons? Was it *after* the *fiſh* was caught that the ſucceſſor of St. Peter uſed the *net*, or was it *before* [*i*]? In a word, is there moſt wiſdom ordinarily where there is leaſt, or where there is moſt to gain by being wiſe [*k*]?

[*i*] Every body has heard the ſtory of him who, from a fiſherman, was made Archbiſhop, and then Pope. While Archbiſhop, it was his cuſtom every day, after dinner, to have a fiſhing net ſpread upon his table, by way of a memento, as he uſed to ſay, of the meanneſs of his original. This farcical oſtentation of humility was what, in thoſe days, contributed not a little to the encreaſe of his reputation. Soon after his exaltation to St. Peter's chair, one of his intimates was taking notice to him, one day, when dinner was over, of the table's not being decked as uſual. "Peace," anſwered the Holy Father, "when the fiſh "is caught, there is no occaſion for the net."

[*k*] In the Houſe of Commons itſelf, is it by the opulent and independent Country gentlemen that the chief buſineſs of the Houſe is tranſacted, or by aſpiring, and perhaps needy Courtiers? The man who would perſevere in the toil of Government, without any other reward than the favour of the people, is certainly the man *for* the people to make choice of. But ſuch men are at beſt but rare. Were it not for thoſe children of Corruption we have been ſpeaking of, the buſineſs of the ſtate, I doubt, would ſtagnate.

XVII. A word

XVII.

A word or two more with reſpect to the characteriſtic qualifications, as our Author ſtates them, of the higher aſſembly of our legiſlature. Experience is, in virtue of their being an ariſtocratical aſſembly, to afford them wiſdom: thus far we were arrived before. But he now puſhes the deduction a ſtep farther.—Wiſdom is to afford them "circumſpec-"tion and mediatory caution:" qualifications which it ſeems as if we ſhould ſee nothing of, were it not for them. Let us now put a caſe. The buſineſs, indeed, that originates in the Houſe of Lords is, as things ſtand, ſo little, that our Author ſeems to forget that there is any. However, ſome there is. A bill then originates with the Lords, and is ſent down to the Commons.—As to "circumſpection" I ſay nothing: *that*, let us hope, is not wanting to either Houſe. But whoſe province is "mediatory caution," now?

XVII. Mediatory caution not the peculiar province of the Lords.

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XVIII.

XVIII. The Democratical branch of our Legiſlature, upon our Author's principles, not diſtinguiſhable from the Ariſtocratical.

Thus much concerning theſe two branches of our legiſlature, ſo long as they continue what, according to our Author's principles, they are at preſent: the Houſe of Lords the Ariſtocratical branch: the Houſe of Commons the Democratical. A little while and we ſhall ſee them ſo; but again a little while, perhaps, and we ſhall not ſee them ſo. By what characteriſtic does our Author diſtinguiſh an Ariſtocratical legiſlative body from a Democratical one? By that of *number*: by the number of the perſons that compoſe them: by that, and that alone: for no other has he given. Now, therefore, to judge by that, the Houſe of Lords, at preſent, indeed, *is* the Ariſtocratical branch: the Houſe of Commons in compariſon at leaſt with the other, the Democratical. Thus far is well. But ſhould the liſt of nobility ſwell at the rate we have ſometimes ſeen it, there is an aſſignable period, and that, perhaps, at no very

very enormous diſtance, at which the aſſembly of the Lords will be more numerous than that of the Commons. Which will *then* be the Ariſtocratical branch of our Legiſlature? Upon our Author's principles, the Houſe of Commons. Which the Democratical? The Houſe of Lords.

XIX.

XIX. All-perfection of the Britiſh Conſtitution mathematically demonſtrated.

The final cauſe we are to obſerve, and finiſhing exploit, the "*portus & ſabbatum*," as Lord Bacon might perhaps have called it [*l*], of this ſublime and edifying diſſertation, is this demonſtration, he has been giving us, of the perfection of the Britiſh Form of Government. This demonſtration (for by no leſs a title ought it to be called) is founded, we may have obſerved, altogether upon the properties of *numbers*: properties, newly diſcovered indeed, and of an

[*l*] It is what he ſays of Theology with reſpect to the Sciences.—V. Augm. Scient. L. VIII. c. III. p. 97.

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extraordinary complection, *moral* properties; but properties, however, ſo it ſeems, of numbers*. 'Tis in the nature then of numbers we ſhall find theſe characteriſtic properties of the three Forms of Government, if any where. Now the properties of numbers are univerſally allowed to be the proper ſubject of that mode of demonſtration which is called *mathematical*. The proof our Author has given has therefore already in it the *eſſence* of ſuch a demonſtration. To be compleat at all points, it wants nothing but the *form*. This deficiency is no other than what an under-rate workman might eaſily ſupply. A mere technical operation does the buſineſs. That humble taſk it ſhall be my endeavour to perform. The ſubſtantial honour I aſcribe wholly to our Author, to whom only it is moſt due.

* V. ſupra.

XX. PROPOSITION.

XX.

PROPOSITION. *THEOREM.*

The British Government is all-perfect.

XX. The demonstration drawn up in form.

DEMONSTRATION.

By definition,	1	The British Government = Monarchy + Aristocracy + Democracy.
Again, by definition,	2	Monarchy = the Government of 1.
Also,	3	Democracy = the Government of *all*.
Also,	4	Aristocracy = the Government of some number between 1 and *all*.
Put	5	*All* = 1,000,000,
Put also	6	The number of governors in an Aristocracy = 1,000.
Now then, by assumption,	7	1 has + strength—wisdom—honesty.
Also,	8	1,000 has + wisdom—strength—honesty.
Also,	9	1,000,000 has + honesty—strength—wisdom.

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The demonſtration drawn up in form.

Rejecting — wiſdom — honeſty [*m*] in [7]	10	1 has + ſtrength.
Alſo rejecting — ſtrength — honeſty in [8]	11	1,000 has + wiſdom.
Alſo rejecting — ſtrength — wiſdom in [9]	12	1,000,000 has + honeſty.
Putting together the expreſſions [10], [11], and [12],	13	1 + 1,000, + 1,000,000 has ſtrength + wiſdom + honeſty.
But by the definitions [1], [2], [3], [4], and the ſuppoſitions [5], [6],	14	The Britiſh Government = 1 + 1,000 + 1,000,000.

[*m*] Which is done without any ſort of ceremony, the quantities marked in this ſtep with the negative ſign, being as ſo many *fluents*, which are at a *maximum*, or a *minimum*, juſt as happens to be moſt convenient.

Therefore,

Therefore, by [13]	15	The Britiſh Government has + ſtrength + wiſdom + honeſty.	CHAP. III.
Changing the expreſſion,	16	The Britiſh Government is all-powerful + all-wiſe + all-honeſt.	The demonſtration drawn up in form.
But by definition	17	All-powerful + all-wiſe + all-honeſt = all-perfect.	
Therefore, by [16] and [17]	18	The Britiſh Government is all-perfect. Q. E. D.	

☞ SCHOLIUM. After the ſame manner it may be proved to be *all-weak*, *all-fooliſh*, and *all-knaviſh*.

XXI.

XXI. Concluſion of the Chapter.

Thus much for the Britiſh Conſtitution; and for the grounds of that pre-eminence which it boaſts, I truſt, indeed, not without reaſon, above all others that are known: Such is the idea our Author gives us of thoſe grounds.—"You are not ſatisfied with it then," ſays ſome one.—Not perfectly.—"What

"is

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Concluſion of the Chapter.

"is then your own?"—In truth this is more than I have yet quite ſettled. I may have ſettled it with myſelf, and not think it worth the giving; but if ever I do think it worth the giving, it will hardly be in the form of a comment on a digreſſion ſtuffed into the belly of a definition. At any rate it is not likely to be much wiſhed for, by thoſe, who have read what has been given us on this ſubject by an ingenious foreigner: ſince it is to a foreigner we were deſtined to owe the beſt idea that has yet been given of a ſubject ſo much our own. Our Author has copied: but Mr. de L'OLME has thought.

The topic which our Author has thus brought upon the carpet (let any one judge with what neceſſity) is in reſpect to ſome parts of it that we have ſeen, rather of an invidious nature. Since, however, it *has* been brought upon the carpet, I have treated it with that plainneſs with which an Engliſhman of all others is bound to treat it, becauſe an Engliſhman may thus treat it and be ſafe. I have ſaid

Concluſion of the Chapter.

what the ſubject ſeemed to demand, without any fear indeed, but without any wiſh, to give offence: reſolving not to permit myſelf to conſider how this or that man might chance to take it. I have ſpoken without ſycophantical reſpects indeed, yet I hope not without decency: certainly without any party ſpleen. I choſe rather to leave it to our Author to compliment men in the lump: and to ſtand aghaſt with admiration at the virtues of men unknown *. Our Author will do as ſhall ſeem meet to him. For my part, if ever I ſtand forth and ſing the ſong of eulogy to great men, it ſhall be not becauſe they *occupy* their ſtation, but becauſe they *deſerve* it.

* V. ſupra, par. 7.

CHAP.

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RIGHT *of the* SUPREME POWER *to make* LAWS.

I.

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I. Subject of the paragraph in queſtion as ſtated by our Author.

WE now come to the third topic touched upon in the digreſſion; namely, the *right*, as our Author phraſes it, which the Supreme Power has of making laws. And this topic occupies one pretty long paragraph. The title here given to it is the ſame which in the next ſucceeding paragraph he has found for it himſelf. This is fortunate: for, to have been obliged to find a title for it myſelf, is what would have been to the laſt degree diſtreſſing. To *intitle* a diſcourſe, is to repreſent the drift of it. But, to repreſent the drift of this, is a taſk which, ſo long at leaſt as I confine my conſideration to the paragraph itſelf, bids defiance to my utmoſt efforts.

II. 'Tis

II.

II. Drift of it, as conjectured.

'Tis to another paſſage or two, a paſſage or two that we have already ſeen ſtarting up in diſtant parts of this digreſſion, that I am indebted for ſuch conjectures as I have been able to make up.

Theſe conjectures, however, I could not have ventured ſo far to rely on, as on the ſtrength of them to have furniſhed the paragraph with a title of my own framing. The danger of miſrepreſentation was too great; a kind of danger which a man cannot but lie imminently expoſed to, who ventures to put a preciſe meaning upon a diſcourſe which in itſelf has none. That I may juſt mention, however, in this place, the reſult of them; what he is really aiming at, I take it, is, to inculcate a perſuaſion that in every ſtate there muſt ſubſiſt, in ſome hands or other, a power that is *abſolute*. I mention it thus prematurely, that the reader may have ſome clue to guide him in

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in his progreſs through the paragraph; which it is now time I ſhould recite.

III.

The paragraph recited.

III.

" Having," ſays our Author, " thus " curſorily conſidered the three uſual " ſpecies of government, and our own " ſingular conſtitution, ſelected and " compounded from them all, I proceed " to obſerve, that, as the power of " making laws conſtitutes the ſupreme " authority, ſo where-ever the ſupreme " authority in any ſtate reſides, it is " the right of that authority to make " laws; that is, in the words of our " definition, to preſcribe the rule of " civil action. And this may be diſco- " vered from the very end and inſtitu- " tion of civil ſtates. For a ſtate is a " collective body, compoſed of a multi- " tude of individuals united for their " ſafety and convenience, and intending " to act together as one man. If it " therefore is to act as one man, it " ought to act by one uniform will. " But in as much as political communi-

" ties

" ties are made up of many natural per-
" ſons, each of whom has his particular
" will and inclination, theſe ſeveral wills
" cannot by any *natural* union be joined
" together, or tempered and diſpoſed
" into a laſting harmony, ſo as to conſti-
" tute and produce that one uniform
" will of the whole. It can therefore
" be no otherwiſe produced than by a
" *political* union; by the conſent of all
" perſons to ſubmit their own private
" wills to the will of one man, or of
" one, or more aſſemblies of men, to
" whom the ſupreme authority is en-
" truſted: and this will of that one man,
" or aſſemblage of men is, in dif-
" ferent ſtates, according to their differ-
" ent conſtitutions, underſtood to be
" law."

IV.

IV. The ſenſe of it conſidered in itſelf.

The other paſſages which ſuggeſted to me the conſtruction I have ventured to put upon this, ſhall be mentioned by and by. Firſt, let us try what is to be made of it by itſelf.

V. The

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V.

V. The leading argument in it nugatory.

The obſcurity in which the firſt ſentence of this paragraph is envelopped, is ſuch, that I know not how to go about bringing it to light, without borrowing a word or two of logicians. Laying aſide the preamble, the body of it, viz. "*as* the power of making laws "conſtitutes the ſupreme authority, ſo "where-ever the ſupreme authority in "any ſtate reſides, it is the right of that "authority to make laws," may be conſidered as conſtituting that ſort of ſyllogiſm which logicians call an *enthymem*. An *enthymem* conſiſts of two *propoſitions*; a *conſequent* and an *antecedent*. "The "power of making laws," ſays our Author, "conſtitutes the ſupreme authority." This is his antecedent. From hence it is he concludes, that "where-ever the "ſupreme authority in any ſtate reſides, "it is the right of that authority to "make laws." This then is his *conſequent*.

Now ſo it is, that this *antecedent*, and this

this *conſequent*, for any difference at leaſt that I can poſſibly perceive in them, would turn out, were they but correctly worded, to mean preciſely the ſame thing: for, after ſaying that "the power of "making laws conſtitutes the ſupreme "authority," to tell us that, for that reaſon, "the ſupreme authority" is (or has) the power (or the right) of making laws, is giving us, I take it, much the ſame ſort of information, as it would be to us to be told that a thing is ſo, *becauſe* it is ſo: a ſort of a truth which there ſeems to be no very great occaſion to ſend us upon "diſcovering, in the end and inſtitution of civil ſtates." That by the "ſo-"vereign power," he meant "the power "of making laws;" this, or ſomething like it, is no more indeed than what he had told us over and over, and over again, with ſingular energy and anxiety, in his 46th page, in his 49th, and in, I know not how many, pages beſides: always taking care, for preciſion's ſake, to give a little variety to the expreſſion: the

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words "*power*" and "*authority*," ſometimes, ſeemingly put for the ſame idea; ſometimes ſeemingly oppoſed to each other: both of them ſometimes denoting the *fictitious* being, the *abſtract quality*; ſometimes the *real* being or beings, the *perſon* or *perſons* ſuppoſed to *poſſeſs* that *quality*.—Let us diſentangle the ſenſe from theſe ambiguities; let us learn to ſpeak diſtinctly of the *perſons*, and of the *quality* we attribute to them; and then let us make another effort to find a meaning for this perplexing paſſage.

VI.

VI. The antecedent ſtated anew.

By the "ſupreme authority" then, (we may ſuppoſe our Author to ſay) "I mean "the ſame thing as when I ſay the power "of making laws." This is the propoſition we took notice of above, under the name of the *antecedent*. This antecedent then, we may obſerve, is a definition: a definition, to wit, of the phraſe "ſupreme authority." Now to define a phraſe is, to tranſlate it into another phraſe, ſuppoſed to be better underſtood, and

and expreſſive of the ſame ideas. The ſuppoſition here then is, that the reader was already, of himſelf, tolerably well acquainted with the import of the phraſe "power of making laws:" that he was not at all, or was however leſs acquainted with the import of the phraſe "ſupreme authority." Upon this ſuppoſition then, it is, that in order to his being made clearly to underſtand the latter, he is informed of its being ſynonymous to the former. Let us now introduce the mention of the *perſon*: let us add the word "*perſon*" to the definition; it will be the ſame definition ſtill in ſubſtance, only a little more fully and preciſely worded. *For a perſon to poſſeſs* the ſupreme authority, is *for a perſon to poſſeſs* the power of making laws. This then is what in ſubſtance has been already laid down in the *antecedent*.

VII.

VII. The conſequent new ſtated.

Now let us conſider the *conſequent*; which, when detached from the context, may be ſpoken of as making a ſentence of itſelf. "Wherever," ſays he, "the ſu-

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" preme authority in any ſtate reſides, it " is the *right* of that authority to make " Laws" — By " *wherever*" I take it for granted, he means, " *in whatever per-* " *ſons:*" by " *authority,*" in the former part of the ſentence,—*power*; by the ſame word, " *authority,*" in the latter part of the ſentence,—*perſons.* Corrected therefore, the ſentence will ſtand thus: *In whatever perſons in any ſtate the ſupreme power reſides, it is the right of thoſe perſons to make Laws.*

VIII.

That it is identical with the antecedent:

VIII.

The only word now remaining undiſpoſed of, is the word "*right.*" And what to think of this, indeed I know not: whether our Author had a meaning in it, or whether he had none. It is inſerted, we may obſerve, in the latter part only of the ſentence: it appears not in the former. Concerning this omiſſion, two conjectures here preſent themſelves: it may have happened by accident; or it may have been made by deſign. If by accident, then the caſe is, that the idea annexed

annexed to the word "*right*" is no other than what was meant to be included in the former part of the ſentence, in which it is *not* expreſſed, as well as in the latter, in which it *is*. In this caſe it may, without any change in the ſignification, be expreſſed in both. Let it then be expreſſed, and the ſentence, take it all together, will ſtand thus: *In whatever perſons* the right of exerciſing *ſupreme power in any ſtate reſides, it is* the right *of thoſe perſons to make Laws*. If this conjecture be the true one, and I am apt to think it is, we ſee once more, and, I truſt, beyond all doubt, that the *conſequent* in this *enthymem* is but a repetition of the *antecedent*. We may judge then, whether it is from any ſuch conſideration as that of "the end "and inſtitution of civil ſtates," or any other conſideration that we are likely to gain any further conviction of the truth of this *concluſion*, than it preſents us of itſelf. We may alſo form ſome judgment before-hand, what uſe or meaning there

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is likely to be in the aſſemblage of words that is to follow.

IX.

IX. —or elſe nothing to the purpoſe.

What is poſſible, notwithſtanding, however improbable, is, that the omiſſion we have been ſpeaking of was *deſigned*. In this caſe, what we are to underſtand is, that the word "*right*" *was* meant to introduce a new idea to this latter part of the ſentence, over and above any that was meant to be ſuggeſted by the former. "*Right*" then, according to this conſtruction, in the one place, is to be conſidered as put in contradiſtinction to *fact* in the other. The ſenſe is then, that *whatever perſons* do actually *exerciſe ſupreme power*, (or what, according to the *antecedent* of the *enthymem*, is the ſame thing, *the power of making laws*) *thoſe perſons* have the right to *exerciſe it*. But, in this caſe, neither does what is given as a *conſequence* in any reſpect follow from the *antecedent*, nor can *any thing be* made of it, but what is altogether foreign to the reſt of the diſcourſe. So much indeed,

deed, that it ſeems more conſonant to probability, as well as more favourable to our Author, to conclude that he had no meaning at all, than that he had this.

X.

Let us now try what we can make of the remainder of the paragraph. Being uſher'd in by the word "*for*," it ſeems to lay claim to the appellation of an argument. This argument, ſetting out, as we have ſeen, without an object, ſeems however to have found ſomething like one at laſt, as if it had picked it up by the way. This object, if I miſtake it not, is to perſuade men, that the *ſupreme power*, (that is the *perſon* or *perſons* in uſe to exerciſe the ſupreme power in a ſtate) ought, in all points without exception, to be obeyed. What men intend, he ſays, to do when they are in a ſtate, is to act, as if they were but "one man." But one man has but one will belonging to him. What they intend therefore, or what they *ought* to intend, (a ſlight difference which our Author ſeems not to be well aware

X. The reſt of the paragraph new ſtated — ſuppoſed drift of it.

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The reſt of the paragraph new ſtated.

of) is, to act as if they had but one will. To act as if they had but one will, the way is, for them to "join" all their wills "together." To do this, the moſt obvious way would be to join them "*naturally:*" but, as *wills* will not ſplice and dovetail like deal boards, the only feaſible way is to join them "*politically.*" Now the only way for men to join their wills together *politically*, is for them all to conſent to ſubmit their wills to the will of one. This one will, to which all others are to be ſubmitted, is the will of thoſe perſons who are in uſe to exerciſe the ſupreme power; whoſe wills again, when there happens to be many of them, have, by a proceſs of which our Author has ſaid nothing, been reduced (as we muſt ſuppoſe) into *one* already. So far our Author's argument. The above is the ſubſtance of it fairly given; not altogether with ſo much ornament, indeed, as he has given it, but, I truſt, with ſomewhat more preciſion. The whole concludes, we may obſerve, with our Author's favourite iden-

tical propoſition, or ſomething like it, now for the twentieth time repeated.

XI.

XI. Weakneſs of it as a perſuaſive to obedience.

Taking it altogether, it is, without queſtion, a very ingenious argument: nor can any thing in the world anſwer the purpoſe better, except juſt in the caſe where it happens to be wanted. Not but that a veteran antagoniſt, trained up in the regular and accuſtomed diſcipline of legal fencing, ſuch an one, indeed, *might* contrive perhaps, with due management, to give our Author the honour of the field. But ſhould ſome undiſciplined blunderer, like the Commiſſary's landlady, thruſt in *quart*, when he ſhould have thruſt in *tierce*, I doubt much whether he might not get within our Author's *guard*. —I "intend?"—I "conſent?"—I "ſubmit" myſelf?—'Who are you, I wonder, that ſhould know what I do better than I do myſelf? As to "*ſubmitting my will*" to the wills of the people who made this law you are ſpeaking of,—what I know is, that I never "intended"

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Weakneſs of it as a perſuaſive to obedience.

'tended" any ſuch thing: I abominate 'them, I tell you, and all they ever did, 'and have always *ſaid* ſo: and as to my '"conſent," ſo far have I been from 'giving it to their law, that, from the 'firſt to the laſt, I have proteſted againſt 'it with all my might.' So much for our refractory diſputant.—What I ſhould ſay to him I know: but what our Author could find to ſay in anſwer to him, is more than I can imagine[*b*].

[*b*] One thing in the paragraph we are conſidering is obſervable; it is the concluding ſentence, in which he brings together the ideas of *law* and *will*. Here then, in the tail of a digreſſion, he comes nearer in fact, though without being aware of it, to the giving a juſt and preciſe idea of a law, than in any part of the definition itſelf from whence he is digreſſing. If, inſtead of ſaying that a law is a *will*, he had called it the *expreſſion* of a *will*, and that ſort of expreſſion of a will which goes by the name of a *command*, his definition would, ſo far as this goes, have been clear as well as right. As it is, it is neither the one nor the other. But of this more, if at all, in another place. The definition of law is a matter of too much nicety and importance to be diſpatched in a note.

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XII.

Let us now return and pick up thoſe other paſſages which we ſuppoſed to have a reſpect to the ſame deſign that ſeems to be in view in this. Firſt comes the ſhort introductory paragraph that uſhers in the whole digreſſion: a paragraph which, however ſhort, and however imperfect with reſpect to the purpoſe of giving a general view of the contents of thoſe which follow it, was, in deſpite of method, to expatiate upon this ſubject. Upon this ſubject, indeed, he does expatiate with a force of argument and energy of expreſſion which nothing can withſtand. "This," it begins, "will "neceſſarily lead us into a ſhort enquiry "concerning the nature of ſociety and "civil government*."---This is all the intimation it gives of the contents of thoſe paragraphs we have examined. Upon *this* before us it touches in energetic terms; but more energetic than preciſe.---"And the *natural*" (it continues) "and *inherent* right that belongs to

XII. A prior paragraph ſuppoſed to be relative to the object of this.

* 1 Comm. 47.

"the

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" the ſovereignty of a ſtate," *(natural* right, obſerve, that belongs to the ſovereignty of a *political* ſociety) " wherever " that ſovereignty be lodged, of making " and enforcing laws."

XIII.

XIII. Another.

This is not all. The moſt emphatical paſſage is yet behind. It is a paſſage in that ſhort paragraph * which we found to contain ſuch a variety of matter. He is there ſpeaking of the ſeveral forms of government now in being. " However " they began," ſays he, "or by what right " ſoever they ſubſiſt, there *is* and *muſt be* " in all of them a *ſupreme, irreſiſtable,* " *abſolute, uncontrouled* authority, in " which the *jura ſummi imperii,* or the " rights of ſovereignty, reſide."

XIV.

XIV. Agitation he betrays.

The vehemence, the δεινοτης, of this paſſage is remarkable. He ranſacks the language: he piles up, one upon another, four of the moſt tremendous epithets he

* 1 Comm. p. 48, ſupra ch. II. par. 11.

can

Agitation he betrays.

can find; he heaps Oſſa upon Pelion: and, as if the Engliſh tongue did not furniſh expreſſions ſtrong or impoſing enough, he tops the whole with a piece of formidable Latinity. From all this agitation, it is plain, I think, there is a ſomething which he has very much at heart; which he wiſhes, but fears, perhaps, to bring out undiſguiſed; which in ſeveral places, notwithſtanding, burſts out involuntarily, as it were, before he is well ready for it; and which, a certain diſcretion, getting at laſt the upper hand of propenſity, forces, as we have ſeen, to dribble away in a ſtring of obſcure ſophiſms. Thus oddly enough it happens, that that paſſage of them all, which, if I miſtake not, is the only one that was meant to be dedicated expreſly to the ſubject, is the leaſt explicit on it [*c*].

[*c*] Another paſſage or two there is which might ſeem to glance the ſame way: but theſe I paſs over as leſs material, after thoſe which we have ſeen.

XV. A cou-

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XV. Cauſe of it.

XV.

A courage much ſtauncher than our Author's might have wavered here. A taſk of no leſs intricacy was here to be travelled through, than that of adjuſting the claims of thoſe two jealous antagoniſts, Liberty and Government. A more invidious ground is ſcarcely to be found any where within the field of politics. Enemies encompaſs the traveller on every ſide. He can ſcarce ſtir but he muſt expect to be aſſaulted with the war-hoop of political hereſy from one quarter or another. Difficult enough is the ſituation of him, who, in theſe defiles, feels himſelf impelled one way by fear, and another by affection.

XVI. Reſource he finds in obſcurity.

XVI.

To return to the paragraph which it was the more immediate buſineſs of this chapter to examine:—Were the path of obſcurity leſs familiar to our Author, one ſhould be tempted to imagine he had ſtruck into it on the particular occaſion before us, in the view of extricating himſelf

Resource he finds in obscurity.

ſelf from this dilemma. A diſcourſe thus prudently indeterminate might expreſs enough to keep fair with the rulers of the earth, without ſetting itſelf in direct array againſt the prejudices of the people. Viewed by different perſons, it might preſent different aſpects: to men in power it might recommend itſelf, and that from the firſt, under the character of a practical leſſon of obedience for the uſe of the people; while among the people themſelves it might paſs muſter, for a time at leaſt, in quality of a ſtring of abſtract ſcientific propoſitions of juriſprudence. It is not till ſome occaſion for making application of it ſhould occur, that its true uſe and efficacy would be brought to light. The people, no matter on what occaſion, begin to murmur, and concert meaſures of reſiſtance. Now then is the time for the latent virtues of this paſſage to be called forth. The book is to be opened to them, and in this paſſage they are to be ſhewn, what of themſelves, perhaps, they would never have obſerved, a

ſet

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Reſource he finds in obſcurity.

ſet of arguments curiouſly ſtrung together and wrapped up, in proof of the univerſal expedience, or rather *neceſſity*, of ſubmiſſion: a neceſſity which is to ariſe, not out of the reflection that *the probable miſchiefs of reſiſtance are greater than the probable miſchiefs of obedience*; not out of any ſuch debateable conſideration; but out of a ſomething that is to be much more cogent and effectual: to wit, a certain *metaphyſico-legal* impotence, which is to beget in them the ſentiment, and anſwer all the purpoſes of a natural one. Armed, and full of indignation, our malecontents are making their way to the royal palace. In vain. A certain *eſtoppel* being made to bolt out upon them, in the manner we have ſeen, by the force of our Author's legal engineering, their arms are to fall, as it were by enchantment, from their hands. To diſagree, to clamour, to oppoſe, to take back, in ſhort, their wills again, is now, they are told, too late: it is what *can*not be done: their wills have been put in *hotchpot* along with

with the reſt: they *have* "united,"—they *have* "conſented,"—they *have* "ſubmitted."—Our Author having thus *put his hook into their noſe*, they are to go back as they came, and all is peace. An ingenious contrivance this enough: but popular paſſion is not to be fooled, I doubt, ſo eaſily. Now and then, it is true, one error may be driven out, for a time, by an oppoſite error: one piece of nonſenſe by another piece of nonſenſe: but for barring the door effectually and for ever againſt all error and all nonſenſe, there is nothing like the ſimple truth.

XVII.

XVII. Inconſiſtency of the preſent paſſage with a former.

After all theſe pains taken to inculcate unreſerved ſubmiſſion, would any one have expected to ſee our Author himſelf among the moſt eager to excite men to diſobedience? and that, perhaps, upon the moſt frivolous pretences? in ſhort, upon any pretence whatſoever? Such, however, upon looking back a little, we ſhall find him. I ſay, among the moſt

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eager; for other men, at leaſt the moſt enlightened advocates for liberty, are content with leaving it to ſubjects to reſiſt, for their own ſakes, on the footing of *permiſſion*: this will not content our Author, but he muſt be forcing it upon them as a point of *duty*.

XVIII. The former paſſage recited.

XVIII.

'Tis in a paſſage antecedent to the digreſſion we are examining, but in the ſame ſection, that, ſpeaking of the pretended law of Nature, and of the law of Revelation, "no human laws," he ſays, "ſhould be *ſuffered* to contradict theſe*." The expreſſion is remarkable. It is not that no human laws ſhould contradict them: but that no human laws ſhould be SUFFERED to contradict them. He then proceeds to give us an example. This example, one might think, would be ſuch as ſhould have the effect of ſoftening the dangerous tendency of the rule:—on the contrary, it is ſuch as cannot but enhance

* 1 Comm. p. 42.

it[d]; and, in the application of it to the rule, the ſubſtance of the latter is again repeated in ſtill more explicit and energetic terms. "Nay," ſays he, ſpeaking of the act he inſtances, "if any human "law ſhould allow or enjoin us to com- "mit it, we are BOUND TO TRANS- "GRESS that human law, or elſe we "muſt offend both the natural and the "divine."

XIX.

XIX. Dangerous tendency of it.

The propriety of this dangerous maxim, ſo far as the Divine Law is concerned,

[d] It is that of murder. In the word here choſen there lurks a fallacy which makes the propoſition the more dangerous as it is the more plauſible. It is too important to be altogether paſt over: at the ſame time that a ſlight hint of it, in this place, is all that can be be given. Murder is *killing* under certain *circumſtances*. —Is the human law then to be allowed to define, in *dernier reſort*, what ſhall be thoſe *circumſtances*, or is it not? If yes, the caſe of a "human law allowing or enjoin- "ing us to commit it," is a caſe that is not ſo much as ſuppoſable: if *no*, adieu to all human laws: to the fire with our Statutes at large, our Reports, our Inſtitutes, and all that we have hitherto been uſed to call our law books; our law books, the only law books we can be ſafe in truſting to, are Puffendorf and the Bible.

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Dangerous tendency of it.

is what I muſt refer to a future occaſion for more particular conſideration [*e*]. As to the LAW *of Nature*, if (as I truſt it will appear) it be nothing but a phraſe [*f*]; if there be no other medium for proving any act to be an offence againſt it, than the miſchievous tendency of ſuch act; if there be no other medium for proving a law of the *ſtate* to be contrary to it, than the *inexpediency* of ſuch law, unleſs the bare unfounded diſapprobation of any one who thinks of it be called a proof; if a teſt for diſtinguiſhing ſuch laws as would be *contrary* to the LAW *of Nature* from ſuch as, *without* being contrary to it, are ſimply *inexpedient*, be that

[*e*] According to our Author, indeed, it ſhould be to no purpoſe to make any ſeparate mention of the two laws; ſince the Divine Law, he tells us, is but "a part "of" that of Nature *. Of conſequence, with reſpect to that part, at leaſt, which is common to both, to be contrary to the one, is, of courſe, to be contrary to the other.

[*f*] This is what there would be occaſion to ſhew more at large in examining ſome former parts of this ſection.

* 1 Comm. p. 42.

which

which neither our Author, nor any man elſe, ſo much as pretended ever to give; if, in a word, there be ſcarce any law whatever but what thoſe who have not liked it have found, on ſome account or another, to be repugnant to ſome text of ſcripture; I ſee no remedy but that the natural tendency of ſuch doctrine is to impel a man, by the force of conſcience, to riſe up in arms againſt any law whatever that he happens not to like. What ſort of government it is that can conſiſt with ſuch a diſpoſition, I muſt leave to our Author to inform us.

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XX.

XX. The principle of UTILITY the only guide under theſe difficulties.

It is the principle of *utility*, accurately apprehended and ſteadily applied, that affords the only clew to guide a man through theſe ſtreights. It is for that, if any, and for that alone to furniſh a deciſion which neither party ſhall dare, in *theory* to diſavow. It is ſomething to reconcile men even in theory. They are, at leaſt, *ſomething* nearer to an effectual

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union, than when at variance as well in reſpect of theory as of practice.

XXI. Juncture for reſiſtance.

XXI.

In ſpeaking of the ſuppoſed contract between King and people*, I have already had occaſion to give the deſcription, and, as it appears to me, the only *general* deſcription that *can* be given, of that juncture at which, and not before, reſiſtance to government becomes *commendable*; or, in other words, reconcileable to juſt notions, whether of *legal* or not, at leaſt of *moral*, and, if there be any difference, *religious* duty †. What was there ſaid was ſpoken, at the time, with reference to that particular branch of government which was then in queſtion; the branch that in this country is adminiſtered by the King. But if it was juſt, as applied to *that* branch of government, and in *this* country, it could only be for the ſame reaſon that it is ſo when applied to the *whole* of government, and that in *any* country whatſoever. It is *then*, we

* Ch. I. † See Ch. V. par. 7, note [*b*].

may

may ſay, and not till then, allowable to, if not incumbent on, every man, as well on the ſcore of *duty* as of *intereſt*, to enter into meaſures of reſiſtance; when, according to the beſt calculation he is able to make, *the probable miſchiefs of reſiſtance* (ſpeaking with reſpect to the community in general) *appear leſs to him than the probable miſchiefs of ſubmiſſion.* This then is to him, that is to each man in particular, the *juncture for reſiſtance.*

XXII.

XXII. Not characterizable by any *common* ſign.

A natural queſtion here is—by what *ſign* ſhall this juncture be known? By what *common* ſignal alike conſpicuous and perceptible to all? A queſtion which is readily enough ſtarted, but to which, I hope, it will be almoſt as readily perceived that it is impoſſible to find an anſwer. *Common* ſign for ſuch a purpoſe, I, for my part, know of none: he muſt be more than a prophet, I think, that can ſhew us one. For that which ſhall ſerve as a particular ſign to each particular perſon, I have already given one—his

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own internal perſuaſion of a ballance of *utility* on the ſide of reſiſtance.

XXIII. Freedom in a government depends not upon any limitation to the Supreme Power.

XXIII.

Unleſs ſuch a ſign then, which I think impoſſible, can be ſhewn, the *field*, if one may ſay ſo, of the ſupreme governor's authority, though not *infinite*, muſt unavoidably, I think, *unleſs where limited by expreſs convention* [g], be allowed to be *indefinite*. Nor can I ſee any narrower, or other bounds to it, under this conſtitution, or under any other yet *freer* conſtitution, if there be one, than under the moſt *deſpotic*. *Before* the juncture I have been deſcribing were arrived, reſiſtance, even in a country like this, would come too ſoon: were the juncture arrived *already*, the time for reſiſtance would be come already, under ſuch a government even as any one ſhould call *deſpotic*.

[g] This reſpects the caſe where one ſtate has, upon *terms*, ſubmitted itſelf to the government of another; or where the governing bodies of a number of ſtates agree to take directions in certain ſpecified caſes, from ſome *body* or other that is diſtinct from all of them: conſiſting of members, for inſtance, appointed out of each.

XXIV. In

XXIV.

XXIV. Principal circumſtances on which it does depend.

In regard to a government that is *free*, and one that is *deſpotic*, wherein is it then that the difference conſiſts? Is it that thoſe perſons in whoſe hands that power is lodged which is acknowledged to be ſupreme, have leſs power in the one than in the other, when it is from cuſtom that they derive it? By no means. It is not that the power of one any more than of the other has any certain bounds to it. The diſtinction turns upon circumſtances of a very different complexion:—on the *manner* in which that whole maſs of power, which, taken together, is ſupreme, is, in a free ſtate, *diſtributed* among the ſeveral ranks of perſons that are ſharers in it:—on the *ſource* from whence their titles to it are ſucceſſively derived:—on the frequent and eaſy *changes* of condition between govern*ors* and govern*ed*; whereby the intereſts of the one claſs are more or leſs indiſtinguiſhably blended with thoſe of the other:—on the *reſponſibility* of the governors; or the right which a ſubject

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ſubject has of having the reaſons publicly aſſigned and canvaſſed of every act of power that is exerted over him:—on the *liberty of the preſs*; or the ſecurity with which every man, be he of the one claſs or the other, may make known his complaints and remonſtrances to the whole community:—on the *liberty of public aſſociation*; or the ſecurity with which malecontents may communicate their ſentiments, concert their plans, and practiſe every mode of oppoſition ſhort of actual revolt, before the executive power can be legally juſtified in diſturbing them.

XXV.

XXV. Freedom in a government how far favourable to reſiſtance.

True then it may be, that, owing to this laſt circumſtance in particular, in a ſtate thus circumſtanced, the road to a revolution, if a revolution be neceſſary, is to appearance ſhorter; certainly more ſmooth and eaſy. More likelihood, certainly, there is of its being ſuch a revolution as ſhall be the work of a number; and in which, therefore, the intereſts of a number are likely to be conſulted. Grant

then, that by reaſon of theſe facilitating circumſtances, the juncture itſelf may arrive ſooner, and upon leſs provocation, under what is called a *free* government, than under what is called an *abſolute* one; grant this;—yet till it *be* arrived, reſiſtance is as much too ſoon under one of them as under the other.

XXVI.

XXVI. The ſupreme power not limited in itſelf.

Let us avow then, in ſhort, ſteadily but calmly, what our Author hazards with anxiety and agitation, that the authority of the ſupreme body cannot, *unleſs where limited by expreſs convention*, be ſaid to have any aſſignable, any certain bounds.—That to ſay there is any act they *cannot* do,—to ſpeak of any thing of their's as being *illegal*,—as being *void*;—to ſpeak of their exceeding their *authority* (whatever be the phraſe)—their *power*,—their *right*,—is, however common, an abuſe of language.

XXVII.

XXVII. Arguments that ſuppoſe it to be ſo, unſatisfactory—

The legiſlature *can*not do it? The legiſlature *can*not make a law to this effect? Why cannot? What is there that ſhould

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ſhould hinder them? Why not *this*, as well as ſo many other laws murmured at, perhaps, as inexpedient, yet ſubmitted to without any queſtion of the *right*? With men of the ſame party, with men whoſe affections are already liſted againſt the law in queſtion, any thing will go down: any rubbiſh is good that will add fuel to the flame. But with regard to an impartial by-ſtander, it is plain that it is not denying the right of the legiſlature, their *authority*, their *power*, or whatever be the word—it is not denying that they *can* do what is in queſtion—it is not that, I ſay, or any diſcourſe verging that way that can tend to give *him* the ſmalleſt ſatisfaction.

XXVIII. —and inapplicable to particulars.

XXVIII.

Grant even the propoſition in general:—What are we the nearer? Grant that there *are* certain bounds to the *authority* of the legiſlature:—Of what uſe is it to ſay ſo, when theſe bounds are what nobody has ever attempted to mark out to any uſeful purpoſe; that is, in any ſuch manner whereby it might be known beforehand what deſcription a law muſt

be

be of to fall *within*, and what to fall *beyond* them? Grant that there *are* things which the legiſlature *can*not do;—grant that there *are* laws which exceed the *power* of the legiſlature to eſtabliſh. What rule does this ſort of diſcourſe furniſh us for determining whether any one that is in queſtion is, or is not of the number? As far as I can diſcover, none. Either the diſcourſe goes on in the confuſion it began;—either all reſts in vague aſſertions, and no intelligible argument at all is offered; or if any, ſuch arguments as are drawn from the principle of *utility*: arguments which, in whatever variety of words expreſſed, come at laſt to neither more nor leſs than this; that the tendency of the law is, to a greater or a leſs degree, pernicious. If this then be the reſult of the argument, why not come home to it at once? Why turn aſide into a wilderneſs of ſophiſtry, when the path of plain reaſon is ſtreight before us?

XXIX.

XXIX. What they lead to is either an appeal to the body of the people—

What practical inferences thoſe who maintain this language mean ſhould be deduced from it, is not altogether clear;

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nor, perhaps, does every one mean the ſame. Some who ſpeak of a law as being *void* (for to this expreſſion, not to travel through the whole liſt, I ſhall confine myſelf) would perſuade us to look upon the authors of it as having thereby *forfeited*, as the phraſe is, their *whole* power: as well that of giving force to the particular law in queſtion, as to any other. Theſe are they who, had they arrived at the ſame practical concluſion through the principle of utility, would have ſpoken of the law as being to ſuch a degree pernicious, as that, were the bulk of the community to ſee it in its true light, *the probable miſchief of reſiſting it would be leſs than the probable miſchief of ſubmitting to it*. Theſe point, in the firſt inſtance, at *hoſtile* oppoſition.

XXX.

XXX. —or to the judicial power.

Thoſe who ſay nothing about forfeiture are commonly leſs violent in their views. Theſe are they who, were they to ground themſelves on the principle of utility, and, to uſe our language, would have ſpoken of the law as being miſchievous indeed, but without ſpeaking of

it as being miſchievous to the degree that has been juſt mentioned. The mode of oppoſition which they point to is one which paſſes under the appellation of a *legal* one.

XXXI.

XXXI. Which tends to give it a controul over the legiſlative.

Admit then the law to be void in their ſenſe, and mark the conſequences. The idea annexed to the epithet *void* is obtained from thoſe inſtances in which we ſee it applied to a private inſtrument. The conſequence of a *private* inſtrument's being void is, that all perſons concerned are to act as if no ſuch inſtrument had exiſted. The conſequence, accordingly, of a *law's* being void muſt be, that people ſhall act as if there were no ſuch law about the matter: and therefore that if any perſon in virtue of the mandate of the law ſhould do any thing in coercion of another perſon, which without ſuch law he would be puniſhable for doing, he would ſtill be puniſhable; to wit, by appointment of the judicial power. Let the law, for inſtance, be a law

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law impoſing a tax: a man who ſhould go about to levy the tax by force would be puniſhable as a treſpaſſer: ſhould he chance to be killed in the attempt, the perſon killing him would *not* be puniſhable as for murder: ſhould he kill, he himſelf *would*, perhaps, be puniſhable as for murder. To whoſe office does it appertain to do thoſe acts in virtue of which ſuch puniſhment would be inflicted? To that of the Judges. Applied to practice then, the effect of this language is, by an appeal made to the Judges, to confer on thoſe magiſtrates a controlling power over the acts of the legiſlature.

XXXII. —A remedy worſe than the diſeaſe.

XXXII.

By this management a *particular* purpoſe might, perhaps, by chance be anſwered: and let this be ſuppoſed a good one. Still what benefit would, from the *general* tendency of ſuch a doctrine, and ſuch a practice in conformity to it, accrue to the body of the people is more than I can conceive. A Parliament, let it be ſuppoſed, is too much under the influence

ence of the Crown: pays too little regard to the ſentiments and the intereſts of the people. Be it ſo. The people at any rate, if not ſo great a ſhare as they might and ought to have, have had, at leaſt, *ſome* ſhare in chuſing it. Give to the Judges a power of annulling its acts; and you transfer a portion of the ſupreme power from an aſſembly which the people have had *ſome* ſhare, at leaſt, in chuſing, to a ſet of men in the choice of whom they have not the leaſt imaginable ſhare: to a ſet of men appointed ſolely by the Crown: appointed *ſolely*, and avowedly and *conſtantly*, by that very magiſtrate whoſe partial and occaſional influence is the very grievance you ſeek to remedy. CHAP. IV.

XXXIII.

In the heat of debate, ſome, perhaps, would be for ſaying of this management that it was transferring at once the ſupreme authority from the legiſlative power to the judicial. But this would be going too far on the other ſide. There

XXXIII. But not ſo bad as ſome might repreſent it.

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is a wide difference between a *poſitive* and a *negative* part in legiſlation. There is a wide difference again between a negative upon *reaſons* given, and a negative without any. The power of *repealing* a law even for reaſons given is a great power: too great indeed for Judges: but ſtill very diſtinguiſhable from, and much inferior to that of *making* one[*b*].

XXXIV. The ſupreme power limitable by convention.

XXXIV.

Let us now go back a little. In denying the exiſtence of any aſſignable

[*b*] Notwithſtanding what has been ſaid, it would be in vain to diſſemble, but that, upon occaſion, an appeal of this ſort may very well anſwer, and has, indeed, in general, a tendency to anſwer, in ſome ſort, the purpoſes of thoſe who eſpouſe, or profeſs to eſpouſe, the intereſts of the people. A public and authorized debate on the propriety of the law is by this means brought on. The artillery of the tongue is played off againſt the law, under cover of the law itſelf. An opportunity is gained of impreſſing ſentiments unfavourable to it, upon a numerous and attentive audience. As to any other effects from ſuch an appeal, let us believe that in the inſtances in which we have ſeen it made, it is the certainty of miſcarriage that has been the encouragement to the attempt.

bounds

The ſupreme power limitable by convention.

bounds to the ſupreme power, I added*, "unleſs where limited by expreſs con- "vention:" for this exception I could not but ſubjoin. Our Author indeed, in that paſſage in which, ſhort as it is, he is the moſt explicit, leaves, we may obſerve, no room for it. "However they "began," ſays he (ſpeaking of the ſeveral forms of government) "however "they began, and by what right ſoever "they ſubſiſt, there is and muſt be in "ALL of them an authority that is ab- "ſolute...." To ſay this, however, of *all* governments without exception;—to ſay that *no* aſſemblage of men can ſubſiſt in a ſtate of government, without being ſubject to ſome *one* body whoſe authority ſtands unlimited ſo much as by convention; to ſay, in ſhort, that not even by convention can any limitation be made to the power of that body in a ſtate which in other reſpects is ſupreme, would be ſaying, I take it, rather too much: it

* V. ſupra, par. 26.

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would be saying that there is no such thing as government in the German Empire; nor in the Dutch Provinces; nor in the Swiss Cantons: nor was of old in the Achæan league.

XXXV.

XXXV. —So as the terms of it be explicit.

In this mode of limitation I see not what there is that need surprize us. By what is it that any degree of *power* (meaning *political power*) is established? It is neither more nor less, as we have already had occasion to observe*, than a habit of, and disposition to obedience: *habit*, speaking with respect to *past* acts; *disposition*, with respect to *future*. This disposition it is as easy, or I am much mistaken, to conceive as being absent with regard to one sort of acts; as present, with regard to another. For a body then, which is in other respects supreme, to be conceived as being with respect to a certain sort of acts limited, all that is necessary is, that this sort of

* V. supra, ch. I. par. 13. note [*b*].

acts be in its deſcription diſtinguiſhable from every other.

XXXVI.

XXXVI. Which furniſhes what may be taken for a common ſignal of reſiſtance.

By means of a convention then we are furniſhed with that common ſignal which, in other caſes, we deſpaired of finding*. A certain act is in the inſtrument of convention ſpecified, with reſpect to which the government is therein precluded from iſſuing a law to a certain effect: whether to the effect of commanding the act, of permitting it, or of forbidding it. A law is iſſued to that effect notwithſtanding. The iſſuing then of ſuch a law (the ſenſe of it, and likewiſe the ſenſe of that part of the convention which provides againſt it being ſuppoſed clear) is a fact notorious and viſible to all: in the iſſuing then of ſuch a law we have a fact which is *capable* of being taken for that common ſignal we have been ſpeaking of. Theſe bounds the ſupreme body in queſtion has marked out to its authority: of ſuch a demarcation then what is the ef-

* V. ſupra, par. 22.

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fect? either none at all, or this: that the diſpoſition to obedience confines itſelf within theſe bounds. Beyond them the diſpoſition is ſtopped from extending: beyond them the ſubject is no more prepared to obey the governing body of his own ſtate, than that of any other. What difficulty, I ſay, there ſhould be in conceiving a ſtate of things to ſubſiſt in which the ſupreme authority is thus limited,—what greater difficulty in conceiving it with this limitation, than without any, I cannot ſee. The two ſtates are, I muſt confeſs, to me alike conceivable: whether alike expedient,—alike conducive to the happineſs of the people, is another queſtion.

XXXVII.

XXXVII. A *ſalvo* for reformation.

God forbid, that from any thing here ſaid it ſhould be concluded that in any ſociety any convention is or can be made, which ſhall have the effect of ſetting up an inſuperable bar to that which the parties affected ſhall deem a reformation:—God forbid that any diſeaſe in the conſtitution

of

of a ſtate ſhould be without its remedy. Such might by ſome be thought to be the caſe, where that ſupreme body which in ſuch a convention, was one of the contracting parties, having incorporated itſelf with that which was the other, no longer ſubſiſts to give any new modification to the engagement. Many ways might however be found to make the requiſite alteration, without any departure from the ſpirit of the engagement. Although that body itſelf which contracted the engagement be no more, a *larger body* from whence the firſt is underſtood to have derived its title, may ſtill ſubſiſt. Let this larger body be conſulted. Various are the ways that might be conceived of doing this, and that without any diſparagement to the dignity of the ſubſiſting legiſlature: of doing it, I mean to ſuch effect, as that, ſhould the ſenſe of ſuch *larger body* be favourable to the alteration, it may be made by a law, which, in this caſe, neither ought to be, nor probably would be,

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regarded by the body of the people as a breach of the convention [*i*].

XXXVIII.

Notion of a natural limit to the ſu-

XXXVIII.

To return for a moment to the language uſed by thoſe who ſpeak of the ſupreme power as being limited in its own

[*i*] In Great Britain, for inſtance, ſuppoſe it were deemed neceſſary to make an alteration in the act of Union. If in an article ſtipulated in favour of England, there need be no difficulty; ſo that there were a majority for the alteration among the Engliſh members, without reckoning the Scotch. The only difficulty would be with reſpect to an article ſtipulated in favour of Scotland; on account, to wit, of the ſmall number of the Scotch members, in compariſon with the Engliſh. In ſuch a caſe, it would be highly expedient, to ſay no more, for the ſake of preſerving the public faith, and to avoid irritating the body of the nation, to take ſome method for making the eſtabliſhment of the new law, depend upon their ſentiments. One ſuch method might be as follows. Let the new law in queſtion be enacted in the common form. But let its commencement be deferred to a diſtant period, ſuppoſe a year or two: let it then, at the end of that period be in force, unleſs petitioned againſt, by perſons of ſuch a deſcription, and in ſuch number as might be ſuppoſed fairly to repreſent the ſentiments of the people in general. perſons, for inſtance, of the deſcription of thoſe who at the time of the Union, conſtituted the body of electors.

own nature. One thing I would wiſh to have remembered. What is here ſaid of the impropriety, and evil influence of that kind of diſcourſe, is not intended to convey the ſmalleſt cenſure on thoſe who uſe it, as if intentionally acceſſary to the ill effects it has a tendency to produce. It is rather a misfortune in the language, than a fault of any perſon in particular. The original of it is loſt in the darkneſs of antiquity. We inherited it from our fathers, and, maugre all its inconveniences, are likely, I doubt, to tranſmit it to our children.

preme power, difficult to eradicate.

To put the validity of the law out of diſpute, it would be neceſſary the fact upon which it was made ultimately to depend, ſhould be in its nature too notorious to be controverted. To determine therefore, whether the conditions upon which the invalidation of it was made to depend, had been complied with, is what muſt be left to the ſimple declaration of ſome perſon or perſons; for inſtance the King. I offer this only as a general idea: and as one amongſt many that perhaps might be offered in the ſame view. It will not be expected that I ſhould here anſwer objections, or enter into details.

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XXXIX.

XXXIX. This not a mere affair of words.

I cannot look upon this as a mere diſpute of words. I cannot help perſuading myſelf, that the diſputes between contending parties—between the defenders of a law and the oppoſers of it, would ſtand a much better chance of being adjuſted than at preſent, were they but explicitly and conſtantly referred at once to the principle of UTILITY. The footing on which this principle reſts every diſpute, is that of matter of fact; that is, future fact—the probability of certain future contingencies. Were the debate then conducted under the auſpices of this principle, one of two things would happen: either men would come to an agreement concerning that probability, or they would ſee at length, after due diſcuſſion of the real grounds of the diſpute, that no agreement was to be hoped for. They would at any rate ſee clearly and explicitly, the point on which the *diſ*agreement turned. The diſcontented party would

would then take their reſolution to reſiſt or to ſubmit, upon juſt grounds, according as it ſhould appear to them worth their while—according to what ſhould appear to them, the importance of the matter in diſpute—according to what ſhould appear to them the probability or improbability of ſucceſs—*according*, in ſhort, *as the miſchiefs of ſubmiſſion ſhould appear to bear a leſs, or a greater ratio to the miſchiefs of reſiſtance.* But the door to reconcilement would be much more open, when they ſaw that it might be not a mere affair of paſſion, but a difference of judgment, and that, for any thing they could know to the contrary, a ſincere one, that was the ground of quarrel.

XL.

XL. The above notion perpetuates wrangling.

All elſe is but womaniſh ſcolding and childiſh altercation, which is ſure to irritate, and which never can perſuade.—"*I* "ſay, the legiſlature can*not* do this—*I* "ſay, that it *can*. *I* ſay, that to do this, "*exceeds* the bounds of its *authority*—*I* ſay,

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I ſay, it does *not*."—It is evident, that a pair of diſputants ſetting out in this manner, may go on irritating and perplexing one another for everlaſting, without the ſmalleſt chance of ever coming to an agreement. It is no more than announcing, and that in an obſcure and at the ſame time, a peremptory and captious manner, their oppoſite perſuaſions, or rather affections, on a queſtion of which neither of them ſets himſelf to diſcuſs the grounds. The queſtion of utility, all this while, moſt probably, is never ſo much as at all brought upon the carpet: if it be, the language in which it is diſcuſſed is ſure to be warped and clouded to make it match with the obſcure and entangled pattern we have ſeen.

XLI.

XLI. The principle of UTILITY puts an end to it.

On the other hand, had the debate been originally and avowedly inſtituted on the footing of utility, the parties might at length have come to an agreement; or at leaſt to a viſible and explicit iſſue.—

The principle of UTILITY puts an end to it.

iſſue.—"*I* ſay, that the miſchiefs of "the meaſure in queſtion are to *ſuch* an "amount.—*I* ſay, *not* ſo, but to a *leſs*. "—*I* ſay, the benefits of it are only to "*ſuch* an amount.—*I* ſay, *not* ſo, but "to a *greater*."—This, we ſee, is a ground of controverſy very different from the former. The queſtion is now manifeſtly a queſtion of conjecture concerning ſo many future contingent matters of fact: to ſolve it, both parties then are naturally directed to ſupport their reſpective perſuaſions by the only evidence the nature of the caſe admits of;—the evidence of ſuch *paſt* matters of fact as appear to be analogous to thoſe contingent *future* ones. Now theſe *paſt* facts are almoſt always numerous: ſo numerous, that till brought into view for the purpoſe of the debate, a great proportion of them are what may very fairly have eſcaped the obſervation of one of the parties: and it is owing, perhaps, to this and nothing elſe, that that party is of the perſuaſion which ſets it at variance with the

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The principle of UTILITY puts an end to it.

the other. Here, then, we have a plain and open road, perhaps, to preſent reconcilement: at the worſt to an intelligible and explicit iſſue,—that is to ſuch a ground of difference as may, when thoroughly trodden and explored, be found to lead on to reconcilement at the laſt. Men, let them but once clearly underſtand one another, will not be long ere they agree. It is the perplexity of ambiguous and ſophiſtical diſcourſe that, while it diſtracts and eludes the apprehenſion, ſtimulates and enflames the paſſions.

But it is now high time we ſhould return to our Author, from whoſe text we have been inſenſibly led aſtray, by the nicety and intricacy of the queſtion it ſeemed to offer to our view.

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CHAP. V.

DUTY *of the* SUPREME POWER *to make* LAWS.

I.

CHAP. V.

I. Subject of the paragraph examined in the preſent chapter.

WE now come to the laſt topic touched upon in this digreſſion: a certain "*duty*," which, according to our Author's account, the ſupreme power lies under:—the *duty of making laws.*

II.

II. The paragraph recited.

"Thus far," ſays he, "as to the *right* "of the ſupreme power to make laws; "but farther, it is its *duty* likewiſe. "*For ſince* the reſpective members are "bound to conform themſelves to the "will of the ſtate, it is expedient that "they *receive directions* from the ſtate "declaratory of that its will. *But ſince* "it is impoſſible, in ſo great a multitude "to give injunctions to every particular "man, relative to each particular action, "therefore

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" therefore the ſtate eſtabliſhes general " rules for the perpetual information and " direction of all perſons, in all points, " whether of poſitive or negative duty. " And this, in order that every man may " know what to look upon as his own, " what as another's; what abſolute and " what relative duties are required at his " hands; what is to be eſteemed honeſt, " diſhoneſt, or indifferent; what degree " every man retains of his natural liber- " ty; what he has given up as the price " of the benefits of ſociety; and after " what manner each perſon is to mode- " rate the uſe and exerciſe of thoſe rights " which the ſtate aſſigns him, in order " to promote and ſecure the public tran- " quillity."

III.

III. The firſt ſentence examined. The moſt obvious ſenſe of it nugatory.

Still as obſcure, ſtill as ambiguous as ever. The "*ſupreme power*" we may remember, according to the definition ſo lately given of it by our Author, and ſo often ſpoken of, is neither more nor leſs than the *power to make laws*. Of this power

power we are now told that it is its "*duty*" to make laws. Hence we learn—what?—that it is its "*duty*" to do what it does; to be, in ſhort, what it is. This then is what the paragraph now before us, with its apparatus of "*fors*", and "*buts*," and "*ſinces*," is deſigned to prove to us. Of this ſtamp is that meaning, at leaſt, of the initial ſentence, which is apparent upon the face of it. CHAP. V.

IV.

IV. The next moſt obvious extravagant.

Compleat the ſenſe of the phraſe, "*to make laws*;" add to it, in this place, what it wants in order to be an adequate expreſſion of the import which the preceding paragraph ſeemed to annex to it; you have now, for what is mentioned as the object of the "*duty*," another ſenſe indeed, but a ſenſe ſtill more untenable than the foregoing. "Thus far," ſays our Author (recapitulating what he had been ſaying before) "as to the *right* of the ſupreme power to make laws."—By this "*right*" we ſaw, in the preceding chapter, was meant, a right to make laws *in*

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all cases whatsoever. "But further," he now adds, "it is its *duty* likewise." Its *duty* then to do—what? to do the same thing that it was before asserted to be its *right* to do—to make laws in all cases whatsoever: or (to use another word, and that our Author's own, and that applied to the same purpose) that it is its duty to be "*absolute**." A sort of duty this which will probably be thought rather a singular one.

V.

A third sense proposed.

Mean time the observation which, if I conjecture right, he really had in view to make, is one which seems very just indeed, and of no mean importance, but which is very obscurely expressed, and not very obviously connected with the purpose of what goes before. The duty he here means is a duty, which respects, I take it, not so much the actual *making* of laws, as the taking of proper measures to *spread abroad* the knowledge of whatever laws happen to *have been* made: a duty which (to adopt some of our Author's own

* 1 Comm. p. 49.

words)

words) is converſant, not ſo much about *iſſuing* "directions," as about providing that ſuch as *are* iſſued ſhall be "*received.*"

VI.

VI. Objection to the uſe of the word "*duty*" on this occaſion.

Mean time to ſpeak of the *duties* of a ſupreme power;—of a *legiſlature*, meaning a *ſupreme* legiſlature;—of a ſet of men acknowledged to be abſolute;—is what, I muſt own, I am not very fond of. Not that I would wiſh the ſubordinate part of the community to be awhit leſs watchful over their governors, or more diſpoſed to unlimited ſubmiſſion in point of *conduct*, than if I were to talk with ever ſo much peremptorineſs of the "*duties*" of theſe latter, and of the *rights* which the former have againſt them[*a*]: what I am afraid of is, running into ſoloeciſm and confuſion in *diſcourſe*.

VII. I under-

[*a*] With this note let no man trouble himſelf who is not uſed, or does not intend to uſe himſelf, to what are called *metaphyſical* ſpeculations: in whoſe eſtimation the benefit of underſtanding clearly what he is ſpeaking of, is not worth the labour.

1. That may be ſaid to be my *duty* to do (underſtand political

1. Duty (political).

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VII.

VII. The *proper* ſenſe of it.

I underſtand, I think, pretty well, what is meant by the word *duty* (political duty) when applied to myſelf; and I could

political duty) which you (or ſome other perſon or perſons) have a *right* to have me made to do. I have then a DUTY *towards* you: you have a RIGHT as *againſt* me.

2. Right (political).

2. What you have a right to have me made to do (underſtand a political right) is that which I am liable, according to law, upon a requiſition made on your behalf, to be *puniſhed* for not doing.

3. Puniſhment a fundamental idea.

3. I ſay *puniſhed:* for without the notion of puniſhment (that is of *pain* annexed to an act, and accruing on a certain *account*, and from a certain *ſource*) no notion can we have of either *right* or *duty*.

4. To *define* or *expound*.

4. Now the idea belonging to the word *pain* is a ſimple one. To *define* or rather (to ſpeak more generally) to *expound* a word, is to reſolve, or to make a progreſs towards reſolving, the idea belonging to it into ſimple ones.

5. Words not to be expounded but by *paraphraſis*.

5. For expounding the words *duty*, *right*, *power*, *title*, and thoſe other terms of the ſame ſtamp that abound ſo much in ethics and juriſprudence, either I am much deceived, or the only method by which any inſtruction can be conveyed, is that which is here exemplified. An expoſition framed after this method I would term *paraphraſis*.

6. *Paraphraſis* what.

6. A word may be ſaid to be expounded by *paraphraſis*, when not that *word* alone is tranſlated into other

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could nōt perſuade myſelf, I think, to apply it in the ſame ſenſe in a regular didactic diſcourſe to thoſe whom I am ſpeaking

The *proper* ſenſe of it.

other *words*, but ſome whole *ſentence* of which it forms a part is tranſlated into another *ſentence*; the words of which latter are expreſſive of ſuch ideas as are *ſimple*, or are more immediately reſolvable into ſimple ones than thoſe of the former. Such are thoſe expreſſive of *ſubſtances* and *ſimple modes*, in reſpect of ſuch *abſtract* terms as are expreſſive of what LOCKE has called *mixed modes*. This, in ſhort, is the only method in which any abſtract terms can, at the long run, be expounded to any inſtructive purpoſe: that is in terms calculated to raiſe *images* either of *ſubſtances* perceived, or of *emotions*; —ſources, one or other of which every idea muſt be drawn from, to be a clear one.

7. The common method of defining—the method *per genus & differentiam*, as logicians call it, will, in many caſes, not at all anſwer the purpoſe. Among abſtract terms we ſoon come to ſuch as have no *ſuperior genus*. A definition, *per genus & differentiam*, when applied to theſe, it is manifeſt, can make no advance: it muſt either ſtop ſhort, or turn back, as it were, upon itſelf, in a *circulate* or a *repetend*.

7. Definition *per genus & differentiam*, not univerſally applicable.

8. "Fortitude is a virtue:"—Very well:—but what is a virtue? "A virtue is a diſpoſition:"—Good again:—but what is a *diſpoſition*? "A *diſpoſition* is a ---;" and there we ſtop. The fact is, a *diſpoſition* has no *ſuperior genus*: a *diſpoſition* is not a ---, any thing:—this is not the way to give us any notion of what is meant by it. "A *power*," again, "is a *right*:" and

8. Further examples;—*diſpoſition*,—*eſtate*,—*intereſt*,—*power*,

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ſpeaking of as my ſupreme governors. That is my *duty* to do, which I am liable to be *puniſhed*, according to law, if I do not do: this is the original, ordinary, and proper ſenſe of the word *duty*[*b*]. Have

The *proper* ſenſe of it.

what is a *right?* It is a *power.*—An *eſtate* is an *intereſt*, ſays our Author ſomewhere; where he begins defining an eſtate:—as well might he have ſaid an *intereſt* was an *eſtate.* As well, in ſhort, were it to define in this manner, a conjunction or a prepoſition. As well were it to ſay of the prepoſition *through*, or of the conjunction *becauſe*; a *through* is a ---, or a *becauſe* is a ---, and ſo go on defining them.

9. An imperfection frequent in our Author's method.

9. Of this ſtamp, by the bye, are ſome of his moſt fundamental definitions: of conſequence they muſt leave the reader where they found him. But of this, perhaps, more fully and methodically on ſome future occaſion. In the mean time I have thrown out theſe looſe hints for the conſideration of the curious.

1. Duties, three ſorts.

[*b*] 1. One may conceive three ſorts of duties; *political*, *moral*, and *religious*; correſpondent to the three ſorts of *ſanctions* by which they are enforced: or the ſame point of conduct may be a man's duty on theſe three ſeveral accounts. After ſpeaking of the one of theſe to put the change upon the reader, and without warning begin ſpeaking of another, or not to let it be ſeen from the firſt which of them one is ſpeaking of, cannot but be productive of confuſion.

2. *Political* duty.

2. Political duty is created by puniſhment: or at leaſt by

Have theſe ſupreme governors any ſuch duty? No: for if they are at all liable to puniſhment

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The *proper* ſenſe of it.

by the will of perſons who have puniſhment in their hands; perſons ſtated and *certain*,—political ſuperiors.

3. Religious duty is alſo created by puniſhment: by puniſhment expected at the hands of a perſon *certain*,—the Supreme Being.

3. *Religious* duty.

4. Moral duty is created by a kind of motive, which from the *un*certainty of the *perſons* to apply it, and of the *ſpecies* and *degree* in which it will be applied, has hardly yet got the name of puniſhment: by various mortifications reſulting from the ill-will of perſons *uncertain* and variable,—the community in general: that is, ſuch individuals of that community as he, whoſe duty is in queſtion, ſhall happen to be connected with.

4. *Moral* duty.

5. When in any of theſe three ſenſes a man aſſerts a point of conduct to be a duty, what he aſſerts is the exiſtence, actual or probable, of an *external* event: viz. of a puniſhment iſſuing from one or other of theſe ſources in conſequence of a contravention of the duty: an event *extrinſic* to, and diſtinct from, as well the conduct of the party ſpoken of, as the ſentiment of him who ſpeaks. If he perſiſts in aſſerting it to be a duty, but without meaning it ſhould be underſtood that it is on any one of theſe three accounts that he looks upon it as ſuch; all he then aſſerts is his own internal *ſentiment*: all he means then is, that he feels himſelf *pleaſed* or *diſpleaſed* at the thoughts of the point of conduct in queſtion, but without being able to tell *why*. In this caſe he ſhould e'en ſay ſo: and not ſeek to give an un-

5. Difference between theſe ſenſes and a fourth which is figurative and *improper*.

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The *proper* ſenſe of it.

puniſhment according to law, whether it be for *not* doing any thing, or for *doing*, then

due influence to his own ſingle ſuffrage, by delivering it in terms that purport to declare the voice either of God, or of the law, or of the people.

6. *Duty* not applicable here in any *proper* ſenſe.

6. Now which of all theſe ſenſes of the word our Author had in mind; in which of them all he meant to aſſert that it was the duty of ſupreme governors to make laws, I know not. *Political* duty is what they cannot be ſubject to*: and to ſay that a duty even of the *moral* or *religious* kind to this effect is incumbent on them, ſeems rather a precipitate aſſertion.

In truth what he meant was neither more nor leſs, I ſuppoſe, than that he ſhould be glad to ſee them do what he is ſpeaking of; to wit, "*make* laws:" that is, as he explains himſelf, ſpread abroad the knowledge of them.—Would he ſo? So indeed ſhould I; and if aſked why, what anſwer our Author would give I know not; but I, for my part, have no difficulty. I anſwer,—becauſe I am perſuaded that it is for the benefit of the community that they (its governors) ſhould do ſo. This would be enough to warrant me in my own opinion for ſaying that they *ought* to do it. For all this, I ſhould not, at any rate, ſay that it was their *duty* in a *political* ſenſe. No more ſhould I venture to ſay it was in a *moral* or *religious* ſenſe, till I were ſatisfied whether they themſelves *thought* the meaſures uſeful and feaſible, and whether they were generally *ſuppoſed* to think ſo.

Were I ſatsified that they *themſelves* thought ſo, God

* See the note following.

then,

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then, are they not, what they are ſuppoſed to be, ſupreme governors[c]: thoſe then, I might ſay, knows they do. God, we are to ſuppoſe, will puniſh them if they neglect purſuing it. It is then their *religious* duty. Were I ſatisfied that the *people* ſuppoſed they thought ſo: the people, I might ſay, in caſe of ſuch neglect,—the people, by various manifeſtations of its ill-will, will alſo puniſh them. It is then their *moral* duty.

The *proper* ſenſe of it.

In any of theſe ſenſes it muſt be obſerved, there can be no more propriety in averring it to be the duty of the ſupreme power to purſue the meaſure in queſtion, than in averring it to be their duty to purſue any other ſuppoſable meaſure equally beneficial to the community. To uſher in the propoſal of a meaſure in this peremptory and aſſuming guiſe, may be pardonable in a looſe rhetorical harangue, but can never be juſtifiable in an exact didactic compoſition. Modes of *private moral* conduct there are indeed many, the tendency whereof is ſo well known and ſo generally acknowledged, that the obſervance of them may well be ſtiled a duty. But to apply the ſame term to the particular details of *legiſlative* conduct, eſpecially newly propoſed ones, is going, I think, too far, and tends only to confuſion.

[c] I mean for what they do, or omit to do, when *acting in a body:* in that body in which, when acting, they are *ſupreme.* Becauſe for any thing any of them do ſeparately, or acting in bodies that are ſubordinate, they may any of them be puniſhed without any diſparagement to their ſupremacy. Not only any *may* be, but many *are:* it is what we ſee examples of every day.

Governors in what way ſubject to *political duties* notwithſtanding their being *ſupreme.*

are

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are the ſupreme governors, by whoſe appointment the former are liable to be puniſhed.

VIII.

VIII. That in which it is here uſed *figurative*.

The word duty, then, if applied to perſons ſpoken of as ſupreme governors, is evidently applied to them in a ſenſe which is figurative and improper: nor therefore are the ſame concluſions to be drawn from any propoſitions in which it is uſed in this ſenſe, as might be drawn from them if it were uſed in the other ſenſe, which is its proper one.

IX.

IX. The propoſition acceded to in this laſt ſenſe.—

This explanation, then, being premiſed;—underſtanding myſelf to be uſing the word *duty* in its improper ſenſe, the propoſition that it is the duty of the legiſlature to ſpread abroad, as much as poſſible, the knowledge of their will among the people, is a propoſition I am diſpoſed moſt unreſervedly to accede to. If this be our Author's meaning, I join myſelf to him heart and voice.

X. What

X.

What particular inſtitutions our Author wiſhed to ſee eſtabliſhed in this view—what *particular* duties he would have found for the legiſlature under this *general* head of duty, is not very apparent: though it is what ſhould have appeared more preciſely than it does, ere his meaning could be apprehended to any purpoſe. What encreaſes ſtill the difficulty of apprehending it, is a practice which we have already had more than once occaſion to detect him in *,—a kind of verſatility, than which nothing can be more vexatious to a reader who makes a point of entering into the ſentiments of his Author. He ſets out with the word "*duty*" in his mouth; and, in the character of a *Cenſor*, with all due gravity begins talking to us of what *ought* to be. 'Tis in the midſt of this lecture that our *Proteus* ſlips aſide; puts on the *hiſtorian*; gives an inſenſible turn to the diſcourſe; and, without

X. Obſcured again by the next ſentence—the *Cenſor's* part confounded with that of the *Hiſtorian*.

* V. ſupra, ch. II. par. 11. ch. III. par. 7. ch. IV. par. 10.

any

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Obſcured again by the next ſentence —the *Cenſor's* part confounded with that of the *Hiſtorian.*

any warning of the change, finiſhes with telling us what *is.* Between theſe two points, indeed, the *is,* and the *ought to be,* ſo oppoſite as they frequently are in the eyes of other men, that ſpirit of obſequious *quietiſm* that ſeems conſtitutional in our Author, will ſcarce ever let him recognize a difference. 'Tis in the ſecond ſentence of the paragraph that he obſerves that "it is *expedient* that they" (the people) "receive directions from the "ſtate" (meaning the governing body) "declaratory of that it's will." 'Tis in the very next ſentence that we learn from him, that what it is thus "*expedient*" that the ſtate *ſhould* do, it *does* do. "But "ſince it is impoſſible in ſo great a mul-"titude, to give particular injunctions to "every particular man relative to each "particular action, therefore," ſays he, "the ſtate eſtabliſhes" (does *actually* eſtabliſh) "general rules" (*the* ſtate generally, *any* ſtate, that is to ſay, that one can mention, all ſtates, in ſhort, whatever *do* eſtabliſh) "general rules for the per-

" petual information and direction of *all* " perſons in *all* points, whether of poſi- " tive or of negative duty." Thus far our Author; ſo that, for ought appears, whatever he could *wiſh* to ſee done in this view *is* done. Neither this ſtate of our own, nor any other, does he wiſh to ſee do any thing more in the matter than he ſees done already; nay, nor than what is ſure to be done at all events: ſo that happily the duty he is here ſo forward to lay on his ſuperiors will not ſit on them very heavy. Thus far is he from having any determinate inſtructive meaning in that part of the paragraph in which, to appearance, and by accident, he comes neareſt to it.

XI.

XI. —Fixed and particularized —*Promulgation* recommended.

Not that the paſſage however is abſolutely ſo remote from meaning, but that the inventive complaiſance of a commentator of the admiring breed might find it pregnant with a good deal of uſeful matter. The deſign of diſſeminating the knowledge

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—Fixed and particularized.—*Promulgation* recommended.

ledge of the laws is glanced at by it at leaſt, with a ſhew of approbation. Were our Author's writings then as ſacred as they are myſterious; and were they in the number of thoſe which ſtamp the ſeal of authority on whatever doctrines can be faſtened on them; what we have read might ſerve as a text, from which the obligation of adopting as many meaſures as a man ſhould deem ſubſervient to that deſign, might, without any unexampled violence, be deduced. In this oracular paſſage I might find inculcated, if not *totidem ſyllabis*, at leaſt *totidem literis*, as many points of legiſlative duty as ſhould ſeem ſubſervient to the purpoſes of *digeſtion* and *promulgation*. Thus fortified, I might preſs upon the legiſlature, and that on the ſcore of "*duty*," to carry into execution, and that without delay, many a buſy project as yet either unthought of or unheeded. I might call them with a tone of authority to their work: I bid them go make proviſion forthwith for

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the bringing to light ſuch ſcattered materials as can be found of the judicial deciſions of time paſt,—ſole and neglected materials of common law;—for the regiſtering and publiſhing of all future ones as they ariſe;—for transforming, by a digeſt, the body of the common law thus compleated, into ſtatute-law;—for breaking down the whole together into *codes* or parcels, as many as there are claſſes of perſons diſtinguiſhably concerned in it;—for introducing to the notice and poſſeſſion of every perſon his reſpective code:—works which public neceſſity cries aloud for, at which profeſſional intereſt ſhudders, and at which legiſlative indolence ſtands aghaſt.

XII.

XII. The recommendation enforced by our Author's concluding ſentence.

All theſe leading points, I ſay, of legiſlative œconomy, with as many points of detail ſubſervient to each as a meditation not unaſſiduous has ſuggeſted, I might enforce, were it neceſſary, by our Author's

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The recommendation enforced by our Author's concluding ſentence.

Author's oracular authority. For nothing leſs than what has been mentioned, I truſt, is neceſſary, in order that every man may be made to know, in the degree in which he *might* and *ought* to be made to know, what (in our Author's words) "to look upon as his own, what as "another's; what abſolute and what re- "lative duties are required at his hands; "what is to be eſteemed honeſt, diſ- "honeſt, or indifferent; what degree "every man retains of his natural liber- "ty; what he has given up as the price "of the benefits of ſociety; and after "what manner each perſon is to mode- "rate the uſe and exerciſe of thoſe rights "which the ſtate aſſigns him, in order "to promote and ſecure the public tran- "quility." In taking my leave of our Author, I finiſh gladly with this pleaſing peroration: a ſcrutinizing judgment, perhaps, would not be altogether ſatisfied with it; but the ear is ſoothed by it, and the heart is warmed.

XIII. I now

XIII.

XIII. Neceſſity and uſe of theſe verbal criticiſms.

I now put an end to the tedious and intricate war of words that has ſubſiſted, in a more particular manner during the courſe of theſe two laſt chapters: a logomachy, wearisome enough, perhaps, and inſipid to the reader, but beyond deſcription laborious and irkſome to the writer. What remedy? Had there been ſenſe, I ſhould have attached myſelf to the ſenſe; finding nothing but words; to the words I was to attach myſelf, or to nothing. Had the doctrine been but *falſe*, the taſk of expoſing it would have been comparatively an eaſy one: but it was what is worſe, *unmeaning*; and thence it came to require all theſe pains which I have been here beſtowing on it: to what profit let the reader judge.

"Well then,"—(cries an objector)—"the taſk you have ſet yourſelf is at an "end; and the ſubject of it after all, "according to your own repreſentation, "teaches nothing;—according to your

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Neceſſity and uſe of theſe verbal criticiſms.

" own ſhewing it is not worth attend-
" ing to.—Why then beſtow on it ſo
" much attention?"

In this view—To do ſomething to inſtruct, but more to undeceive, the timid and admiring ſtudent:—to excite him to place more confidence in his own ſtrength, and leſs in the infallibility of great names:—to help him to emancipate his judgment from the ſhackles of authority:—to let him ſee that the not underſtanding a diſcourſe may as well be the writer's fault as the reader's:—to teach him to diſtinguiſh between ſhewy language and ſound ſenſe:—to warn him not to pay himſelf with words:—to ſhew him that what may tickle the ear, or dazzle the imagination, will not always inform the judgment:—to ſhew him what it is our Author can do, and has done; and what it is he has not done, and cannot do:—to diſpoſe him rather to faſt on ignorance than feed himſelf with error:—to let him ſee that with

regard to an expoſitor of the law, our Author is not *he that ſhould come*, but that we may be ſtill *looking for another*. ——" Who then," ſays my objector, " ſhall be that other? Yourſelf?"—— No verily.——My miſſion is at an end, when I have *prepared the way before him*.

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